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In the Supreme Court of the United States

MICHAEL NEGELE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether Congress intended to provide Article III jurisdiction to redetermine a naturalized citizen's visa eligibility and admissibility to this country and to set aside lawfully-admitted immigrant status as a basis for revoking citizenship under 8 U.S.C. § 1451(a).

Whether Due Process permits a district court to denaturalize a citizen by applying immigration law that was abrogated without savings provisions prior to the date the citizenship order was entered.

Whether Due Process permits a distinction among naturalized citizens by applying to one class the immigration laws under which it entered the country for denaturalization purposes, while at the same time applying to the other class the less restrictive naturalization laws for the same purposes, when in fact both classes were naturalized under the same laws.

PARTIES TO THE PROCEEDING

Petitioner

Michael Negele is an individual and has no corporate affiliations.

Respondent

The Respondent is The United States of America.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF CITED AUTHORITIES vi

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 4

A. The District Court's Method of Denaturalization 5

B. The Effect of the District Court's Denaturalization Method 6

1. The Government's Method Violates the Doctrine of the Separation of Powers 7

2. Using Law Abrogated Prior to the Entry of the Citizenship Order As Its Basis for Denaturalization Violates the

Petitioner's Fifth Amendment Right to Due Process 8

3. **This Disparate Treatment of Citizens in Denaturalization Presents an Arbitrary Standard in Violation of Equal Protection** 9

REASONS FOR GRANTING THE WRIT 10

A. **SEPARATION OF POWERS AND THE LAW BAR AN ARTICLE III COURT FROM REVIEWING IMMIGRATION IN DENATURALIZATION PROCEEDINGS** 13

B. **THE NATURALIZING COURT MUST APPLY THE LAW IN EFFECT WHEN IT ORDERED CITIZENSHIP AND ITS FAILURE TO DO SO VIOLATES THE DUE PROCESS CLAUSE** 16

C. **THE INCONSISTENT STANDARD FOR DENATURALIZATION AFFIRMED BY THE CIRCUIT COURT PROVIDES ARBITRARY AND DISPARATE TREATMENT FOR THOSE CITIZENS WHO ENTERED THIS COUNTRY PRIOR TO THE 1952 ACT** 20

CONCLUSION 22

APPENDIX

Appendix A
Opinion of the U.S. Court of Appeals for the Eighth Circuit, decided August 17, 2000 . . . . . 1a

Appendix B
Memorandum and Order of the U.S. District Court for the Eastern District of Missouri, filed July 20, 1999 . . . . . 11a

Appendix C
Memorandum and Order of the U.S. District Court for the Eastern District of Missouri, filed February 26, 1999, denying defendant's Motion to Dismiss 130a

Appendix D
Order Denying Petition for Rehearing and for Rehearing en banc, filed October 24, 2000 . . . . . 143a

Appendix E
Second Amended Complaint, filed January 19, 1999 . . . . . 145a

Appendix F
Certificate of Naturalization of Michael Negele 164a

Appendix G
Department of State Instruction, dated March 2, 1954 . . . . . 165a

TABLE OF CITED AUTHORITIES

Page(s)

Cases

Bradley v. Richmond School Board,
416 U.S. 696 (1973) 17

Bruner v. U.S.,
343 U.S. 112 (1952) 17

George W. Bush, et al. v. Albert Gore, Jr., et al.
531 U.S. __ (2000) 22

Ex parte McCardle,
74 U.S. 506 (1868) 17

Fedorenko v. United States,
449 U.S. 490 (1981) 10, 12, 18, 20

Fiallo v. Bell,
430 U.S. 787 (1977) 13

Flanigan v. Sierra County,
196 U.S. 553 (1905) 17

Fong Yue Tong v. U.S.,
149 U.S. 698 (1883) 15

Galvan v. Press,
347 U.S. 522 (1953) 14, 16

Gonzales v. Reno,
212 F.3d 1338 (11th Cir., 2000),
cert. den. __ U.S. __(2000) 13

Hamm v. Rock Hill,
379 U.S. 306 (1964) 17

Harisaides v. Shaughnessy,
342 U.S. 580 (1952) 13

Hung Chi Doan et al. v. INS,
160 F.3d 508 (8th Cir. 1998) 15, 16

In the Matter of B—,
5 I&N Dec. 225 (BIA 1953) 19, 21

INS v. Chadha,
462 U.S. 919 (1983) 15

INS v. Jong Ha Wang,
450 U.S. 139 (1981) 13

Japanese Immigrant Case,
189 U.S. 86 (1903) 14

Kleindienst v. Mandel,
408 U.S. 753 (1972) 16

Knauff v. Shaughnessy,
338 U.S. 537 (1950) 14

Kungys v. United States,
485 U.S. 773 (1988) 10, 11, 12, 13

Landgraf v. USI Film Products, Inc.,
511 U.S. 244 (1994) 19

Landon v. Plasencia,
459 U.S. 21 (1982) 13

Lehmann v. Carson,
352 U.S. 685 (1957) 17, 19

Lindh v. Murphy,
521 U.S. 320 (1999) 19

Morrison v. Olson,
487 U.S. 654 (1988) 14

Nishimura v. Ekiu,
142 U.S. 651 (1892) 14

Schneiderman v. United States,
320 U.S. 118 (1943) 7, 9, 18

Shomberg v. U.S.,
348 U.S. 540 (1955) 19

Shaughnessy v. Mezei,
345 U.S. 206 (1953) 14

Thorpe v. Housing Authority,
393 U.S. 268 (1969) 17

United States of America v. Michael Negele,
222 F.3d 443 (8th Cir. 2000) . . . . . *passim*

United States v. Menasche,
348 U.S. 328 (1955) 19

U.S. v. Chambers,
291 U.S. 217 (1934) 18

U.S. v. Riela,
337 F.2d 986 (3rd Cir. 1964) 18

U.S. v. The Schooner Peggy,
1 Cranch 103 (1801) 17

U.S.A. v. Tittjung,
__ F.3d __ , 2000 WL 1943257
(7th Cir., 2000) 17, 18

Statutes

The Immigration Act of 1924, 43 Stat.153 . . . . . *passim*

The Displaced Persons Act, 62 Stat. 1009
(expired on August 31, 1952),
64 Stat. 225 . . . . . *passim*

Immigration and Nationality Act of 1952,
66 Stat. 163. . . . . *passim*
§ 403(a)(23) 8
§ 405 . . . . . 8, 17, 19

8 U.S.C. § 1101(a)(20), § 101(a)(20) 14

8 U.S.C. § 1103, § 103(a). 2, 13, 14

8 U.S.C. § 1104, § 104(a) 3, 13

8 U.S.C. § 1427(a), § 316(a) . . . . . *passim*

8 U.S.C. § 1429, § 318 . . . . . *passim*

8 U.S.C. § 1443(a), § 332(a) 21

8 U.S.C. § 1449 (§ 338) 19

8 U.S.C. § 1451(a), § 340(a) (as amended) . . . . . *passim*

28 U.S.C. § 1254 (1) 1

50 U.S.C. App. §§ 1951-1965 8

Presidential Proclamation 3004 of January 17, 1953 . . . 6

Refugee Relief Act of 1953 21

United States Constitution

Article I, § 8, cl. 4 . . . . . 15, 21

Article II, § 2, cl. 2 13

Fifth Amendment 1, 2, 10

Federal Regulation

8 C.F.R., Part I, § 1.1(p) 14

The Petitioner, Michael Negele, respectfully prays that this Court issue a writ of certiorari to review the judgment of the Eighth Circuit Court of Appeals in this case.

OPINIONS BELOW

The opinion of the Eighth Circuit (App. A, p. 1a) is reported at *United States of America v. Michael Negele*, 222 F.3d 443 (8th Cir. 2000), and the unreported district court opinion is reprinted (App. B, p. 11a). The opinion and order of February 26, 1999 denying petitioner's motion to dismiss the Complaint is reprinted (App. C, p. 130a).

STATEMENT OF JURISDICTION

The judgment of the Eighth Circuit Court of Appeals was entered on August 17, 2000. The Court of Appeals entered its order denying a timely petition for rehearing and petition for rehearing en banc on October 24, 2000 (App. D, p. 143a).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the limits of Article III jurisdiction in citizenship revocation under 8 U.S.C. § 1451(a), § 340(a), as amended, of the Immigration and Nationality Act of 1952, the constitutional doctrine of Separation of Powers, Due Process, and Equal Protection under the Fifth Amendment of the United States Constitution.

The Fifth Amendment states:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The Immigration and Nationality Act (1952 Act), 66 Stat. 163, provides in pertinent part with respect to the powers and duties of the executive in immigration matters:

> § 103. (a) The Attorney General shall be charged with the administration and enforcement of this Act and all other laws and regulations relating to the immigration and naturalization of aliens, except insofar as this Act or such laws relate to the powers of the President, the Secretary of State, the officers of the Department of State or diplomatic or consular officer: *Provided, however*, that determination and ruling by the Attorney General with respect to all questions of law shall be controlling.
> 8 U.S.C. § 1103

> § 104. (a) The Secretary of State shall be charged with the administration and enforcement of the provisions of this Act and all other immigration and nationality laws relating to (1) the powers, duties and functions of diplomatic and consular officers of the United States, except those powers, duties and functions conferred upon the consular officers relating to the granting or refusal of visas . . .
> 8 U.S.C. § 1104

The pertinent statutory requirements for citizenship under the Immigration and Nationality Act of 1952 specifically provide in part:

> § 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years . . .
> 8 U.S.C. § 1427(a)

> § 318. Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. 8 U.S.C. § 1429

Jurisdiction to revoke naturalization is as follows:

> 8 U.S.C. § 1451(a) It shall be the duty of the United States attorney for the respective districts upon affidavit showing good cause therefore, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively . . . § 340(a) (as amended)

STATEMENT OF THE CASE

Michael Negele was inspected and admitted to this country by the Immigration and Naturalization Service (INS) on March 22, 1950, and naturalized pursuant to 8 U.S.C. § 1427(a) (§ 316(a)) of the 1952 Act by order of the district court in St. Louis on September 9, 1955.

On September 2, 1997, the Government, represented by the Office of Special Investigations (OSI), Department of Justice, filed a Complaint demanding revocation of the order admitting Michael Negele to citizenship and canceling the

certificate of citizenship on the ground that his naturalization was illegally procured pursuant to 8 U.S.C. § 1451(a).

A. The District Court's Method of Denaturalization

The fundamental issue in *Negele* is twofold, whether § 1451(a) provides Article III jurisdiction to revoke naturalization based on the petitioner's visa entry to this country, and whether the court may revoke naturalization by applying immigration law that had been abrogated prior to the date of the citizenship order.[1]

The district court revoked citizenship using the following method. The Government's Second Amended Complaint (App. E, p. 145a) contains three counts, each charging that the defendant's order of citizenship was illegally procured in 1955 because his military service during the war as a private in the Waffen-SS stationed as a perimeter guard at two German concentration camps made him ineligible to receive a visa under the Displaced Persons Act (DPA) of 1948 (62 Stat. 1009) and the Immigration Act of 1924 (1924 Act) (43 Stat.153); consequently, his entry into the United States in 1950 was unlawful, with the result that he was not "lawfully admitted" and therefore not in compliance with § 1427(a) when granted citizenship in 1955. Therefore, Negele's order of citizenship was illegally procured and was revoked.

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[1] The Displaced Persons Act expired on August 31, 1952 (64 Stat. 225), and the Immigration Act of 1924 was repealed by the 1952 Act on December 24, 1952 (66 Stat. 279).

The court's method of finding the visa-entry unlawful applies to all three counts and is the only method used in this case to revoke the defendant's citizenship order.[2]

The district court found jurisdiction under § 1451(a) to redetermine Negele's visa eligibility under abrogated immigration law (DPA-1948 and 1924 Act). The result of this method: the district court overruled the visa-eligibility decision of the consular officer and the admissibility decision of the immigrant inspector (INS) permitting Negele's entry in 1950, and it found him to be not lawfully admitted. This is the trial court's basis for denaturalization, which was affirmed on appeal.

B. The Effect of the District Court's Denaturalization Method

The denaturalization procedure here is a trial *de novo* on the facts that established the petitioner's *immigration* to this country in 1950 under *immigration* law, the DPA and the 1924 Act, which were abrogated three years prior to the date the citizenship order was entered. That 1955 court order, however, "found" that Negele had "complied" with "*naturalization laws*." (*See* Certificate of Naturalization, App. F, p. 164a)

Sustaining this visa-attack method means that any naturalized citizen can be charged and denaturalized based on his alleged lack of qualifications for a visa and admission to this country under the *immigration* laws in effect when he

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[2] On Count III, the court, using the same method, denaturalizes under a State Department regulation that was revoked also on December 24, 1952. (App. E, pp. 154-6a) *See* Presidential Proclamation 3004 of January 17, 1953.

entered. Section 1451(a), however, provides for revocation of the "*order* admitting such person to citizenship . . . on the ground that such *order* . . . [was] illegally procured . . ." (emphasis added)

Section 1451(a) neither grants nor implies immigration-reviewing authority, nor shows congressional intent permitting the retrospective application of §§ 1451(a) or 1427(a) to the abrogated *immigration* law in effect when Negele entered in 1950.

In *Schneiderman v. United States*, 320 U.S. 118 (1943), a denaturalization case addressing the meaning of "illegally procured" in the context of a retrial on the facts that established the *citizenship* order, Justice Rutledge concurring states:

> If this is the law and the right the naturalized citizen acquires, his admission creates nothing more than citizenship in attenuated, if not suspended, animation. He acquires but prima facie status, if that . . . . This is not citizenship. Nor is it adjudication. (pp. 166-7.)

See also the concurring opinion of Justice Douglas as to the inquiry limits of "illegally procured." (p. 161.)

1. The Government's Method Violates the Doctrine of the Separation of Powers

This denaturalization method permits a district court to review a citizen's immigration *de novo*, substitute its judgment, set aside two executive decisions, and find that the defendant was neither visa-eligible nor admissible and thus

not lawfully admitted for permanent residence when he entered. Congress, however, has neither granted visa- or admission-revocation nor original immigration-reviewing jurisdiction to an Article III court. Employing this method in *Negele*, the district court entered the exclusive realm of the executive branch in determining immigration matters and thus violated the constitutional doctrine of the Separation of Powers.

2. Using Immigration Law Abrogated Prior to the Entry of the Citizenship Order As Its Basis for Denaturalization Violates the Petitioner's Fifth Amendment Right to Due Process.

When the naturalizing court issued Negele's order of citizenship in 1955, the only law in existence pertinent to this case was the Immigration and Nationality Act of 1952.

In denaturalizing Negele, the district court stretched § 1427(a) - "lawfully admitted" - back and applied it retroactively to Negele's immigration under two statutes that had been separately abrogated in 1952: the Displaced Persons Act of 1948 (DPA), expired in 1952 without savings provisions (50 U.S.C. App. §§ 1951-1965), and the Immigration Act of 1924 (1924 Act), repealed by § 403 (a)(23) of the 1952 Act (66 Stat. 279).[3]

The district court's denaturalization method proceeds, therefore, under no law in effect when the citizenship order was issued in 1955, thus denying the defendant his

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[3] Section 405 of the 1952 Act (66 Stat. 280) provided a savings provision for the 1924 Act if the new act did not specifically provide otherwise. *See* 8 U.S.C. § 1429 (§ 318).

constitutional right to due process under the Fifth Amendment.[4]

3. This Disparate Treatment of Citizens in Denaturalization Presents an Arbitrary Standard in Violation of Equal Protection.

Courts have followed OSI's method as to Negele and other similarly situated immigrants who entered under the Displaced Persons Act (1948). This has provided a facile denaturalization method by first attacking and setting aside the visa entry as the basis for "illegally procured," thereby removing a citizenship qualification, rather than attacking directly the order of citizenship as § 1451(a) requires. The result: an immigrant with camp-service during the war who entered under the DPA is denaturalized because the district court found him to have been not *visa* eligible when admitted. However, since the 1952 Act did not have the same visa restrictions, another immigrant with the same camp-service background, having entered under the later act without the earlier restrictions, could not be denaturalized in the same manner.

Negele, like the hypothetical 1952-Act entrant, also qualified for citizenship as "lawfully admitted under the provisions of this Act." 8 U.S.C. § 1429. The denaturalizing court, however, arbitrarily reviewed Negele's citizenship qualifications as to "lawfully admitted" under two abrogated immigration laws in effect when he entered, thus denying equal protection.

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[4] The *Schneiderman* court was uncertain if it could review *de novo* the underlying facts of the *citizenship* proceedings as its basis for determining an "illegally procured" order. (pp. 124-125.)

REASON FOR GRANTING THE WRIT

This case presents new and important questions of federal and constitutional law that this Court has never addressed: 1) whether the constitutional doctrine of Separation of Powers permits original Article III jurisdiction to review, redetermine, and set aside visa-eligibility and admissibility (immigration) as its basis for determining an illegally-procured order of citizenship; 2) whether due process under the Fifth Amendment permits Article III jurisdiction to revoke a citizenship order based on immigration law that was abrogated prior to the petitioner's admission to citizenship; and 3) whether this denaturalization method applies arbitrary standards for denaturalization that result in the denial of equal protection.

It is important for this Court to review these issues in *Negele* because this has been OSI's method in nearly every one of its cases since this Court's pronouncement in *Fedorenko v. United States*, 449 U.S. 490 (1981); and it has been the denaturalization method followed by federal courts in the past and will continue indefinitely. Presently there are at least seven of these cases pending in various stages of litigation in district and circuit courts in New York, Pennsylvania, Ohio, and Illinois. Each case charges a violation of abrogated immigration law as its basis for an "illegally procured" citizenship order and demands immigration redetermination and denaturalization.

In *Kungys v. United States*, 485 U.S. 773 (1988), this Court held with respect to the immigration issue that the application to the visa of two of the three denaturalization grounds – concealment and misrepresentation – "stretches" those grounds beyond the intent of the statute; Justice Scalia:

> . . . the 'concealment or misrepresentation' clause of § 1451(a) applies only when the '*order and certificate of naturalization* . . . were procured by concealment of a material fact or by willful misrepresentation.' Procurement of other benefits, including visas, is not covered. . . . [W]e are unpersuaded by the Government's argument that a misrepresentation in the visa proceeding 'procures' the naturalization because it obtains United States residence, which in turn is a prerequisite to naturalization, *see* 8 U.S.C. § 1429. (p. 773)

This Court refers to § 1429, the statute under which "lawfully admitted" must be judged.[5] In *Negele*, however, the charge is *illegally procured,* the last denaturalization ground to be reviewed in this context.

In *Kungys* (p. 774, fn. 8), this Court specifically identifies the issue in *Negele*:

> It is a quite different question not argued here, whether under the statutes governing the issuance of visas in 1947, Kungys' misrepresentations or concealments at that time *rendered his visa invalid*, thus causing his United States residence to be unlawful, and (since lawful residence is a requirement of naturalization) his naturalization to be 'illegally procured' under that separate

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[5] § 1429 states that "no person shall be naturalized unless he has been lawfully admitted . . . for permanent residence in accordance with . . . this Act."

provision of § 1451(a). *See Fedorenko v. United States*, 449 U.S. 490, 509 (1981).[6]

This is a case of first impression for this Court, and on this question noted in *Kungys* the petitioner seeks argument and review.[7]

The Complaint (App. E, p. 145a) charged on Count I that Negele's camp service constituted membership or participation in a hostile movement in violation of § 13 of the DPA, thus making him visa ineligible (pp. 152-3a, par. 28-32). In Count II, Negele's willful misrepresentation and concealment of material facts (camp service) for the purpose of gaining admission made him visa ineligible under § 13(a) of the 1924 Act (p. 153a, par. 34-7).[8] And in Count III, his camp service *per se*, constituted advocacy and acquiescence in activities or conduct contrary to civilization and human decency in violation of State Department regulations, making him visa ineligible under the 1924 Act (pp. 155-6a, par. 42-44). The court found on all counts: Count I (p. 103a), Count II (p. 117a), and Count III (p. 125-6a). The result: Negele's visa was *invalid*, and therefore he was not lawfully admitted

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[6] Though cited, *Fedorenko* did not address § 1429 (p. 514, fn. 36).

[7] Apart from OSI, the Department of Justice does not use this denaturalization method.

[8] The 1924 Act does not contain the language "willful misrepresentation or concealment of material facts." Similar language is found only in § 1451(a) and DPA § 10 (62 Stat. 1013).

as to all counts; therefore his citizenship order was illegally procured and required revocation (p. 126a).[9]

The visa-attack method rejected in *Kungys* is the same denaturalization method used in *Negele*; now, however, it is framed in the context of "illegally procured," the last statutory ground for denaturalization yet to be addressed by this Court.

A. SEPARATION OF POWERS AND THE LAW BAR AN ARTICLE III COURT FROM REVIEWING IMMIGRATION IN DENATURALIZATION PROCEEDINGS

In reviewing Negele's visa eligibility and former immigration status under § 1451(a), the district court has gone beyond the intent of Congress.

Sections 103 and 104, 8 U.S.C. §§ 1103 and 1104, provide that admission and visa issuance lie exclusively with the executive branch of Government, and show plainly that Congress has denied original immigration-reviewing jurisdiction to federal courts. *Harisaides v. Shaughnessy*, 342 U.S. 580, 589 (1952); *Landon v. Plasencia*, 459 U.S. 21 (1982); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Fiallo v. Bell*, 430 U.S. 787 (1977); and *Gonzales v. Reno*, 212 F.3d 1338 (11th Cir., 2000), cert. den. ____ U.S. ____ (2000).

Section 1104 charges the consular officer with the exclusive power "relating to the granting or refusal of visas . . ." A consular officer is a principal officer under the appointment clause of the U.S. Constitution, Art. II, § 2, cl.

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[9] No immigration law now or in the past renders a visa "invalid" in this context.

2, acting under delegation of executive power pursuant to statute. *See Morrison v. Olson*, 487 U.S. 654, 670 (1988).

Section 1103 charges the Attorney General "with the administration and enforcement of the Act" and the "determination and ruling by the Attorney General with respect to all questions of law shall be controlling." The statute also permits the delegation of this authority to the Commissioner of Immigration. Further, the authority to strip an alien of his lawfully admitted status lies exclusively with the Attorney General, with only limited judicial review. *Shaughnessy v. Mezei*, 345 U.S. 206 (1953), and *Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

Any authority for judicial review of a citizen's immigration status must be expressly given by Congress. *Nishimura v. Ekiu*, 142 U.S. 651 (1892), and *Japanese Immigrant Case*, 189 U.S. 86 (1903). *See also Galvan v. Press*, 347 U.S. 522 (1953). None is authorized or implied in the context of denaturalization under § 1451(a), or under §1427(a), or under any other statute.[10]

With respect to judicial review of immigration and the Separation of Powers, the Circuit Court in this case addresses the constitutional issue (App. A, p. 7a):

> Negele's argument is specious. The Constitution endows Congress with the power to prescribe rules for securing naturalization.

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[10] "Lawfully admitted" is status granted by the Attorney General, and it is revoked "upon entry of a final administrative order of exclusion or deportation." 8 C.F.R., Part I, § 1.1 (p). *See also* the definition of "lawfully admitted, 8 U.S.C. § 1101(a)(20), (§ 101(a)(20)).

> *See* U.S. Const. Art. I, § 8, cl. 4. When Congress lawfully delegates responsibility to the executive branch, the executive's activities may be scrutinized by the judiciary to ensure that the executive acts within the scope of its proper authority. Cf. *INS v. Chadha*, 462 U.S. 919, 953 n.16 (1983) ("[executive action under legislatively delegated authority] is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review").

The Circuit finds judicial review inherent whenever legislation authorizes executive action. However, while § 1451(a) authorizes judicial review of the *naturalization* order, the Circuit opinion does not address the crucial issue whether this statute authorizes original federal jurisdiction to revoke, redetermine, or review a citizen's former *immigration* status as the court's basis for denaturalization.[11] The district court finds immigration jurisdiction in this context under § 1451(a) (App. C, pp. 139-40a).

Negele also conflicts with a previous opinion of the Eighth Circuit. *Hung Chi Doan et al. v. INS*, 160 F.3d 508 (8th Cir. 1998), concerned INS's denial of a refugee-waiver application. The district court found the decision non-reviewable, and the Eighth Circuit affirmed, holding that the INS director's decision is that of "an Executive branch official . . . deciding questions of admissibility . . ." and

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[11] This Court has consistently held that immigration jurisdiction is the exclusive realm of the executive, unless Congress expressly provides otherwise. *See also Fong Yue Tong v. United States*, 149 U.S. 698 (1883).

"administrative decisions excluding aliens are not subject to judicial review unless there is a clear grant of authority by statute." (citing *Kleindienst v. Mandel*, 408 U.S. 753 (1972); other citations omitted.) *See also Galvan v. Press*, *supra*, 530-1.

In *Negele*, as in *Hung Chi Doan*, there is no clear congressional grant of authority to review these executive decisions. The two decisions, therefore, are in conflict.[12]

Neither § 1451(a) nor any other statute provides original federal jurisdiction to set aside or review the visa-eligibility decision of a consular officer or the admissibility decision of the INS. This revocation method encroaches on the exclusive immigration jurisdiction of the executive and violates the constitutional doctrine of the Separation of Powers.

B. THE NATURALIZING COURT MUST APPLY THE LAW IN EFFECT WHEN IT ORDERS CITIZENSHIP, AND ITS FAILURE TO DO SO VIOLATES THE DUE PROCESS CLAUSE.

The Court of Appeals held that the defendant's challenge to the trial court's application of abrogated law in deciding this case was "properly regarded as a substantive claim of error, rather than a jurisdictional challenge." *See* App. A, p. 7a.

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[12] The *Negele* court's denaturalization method, therefore, permits original immigration-reviewing jurisdiction in a district court *after* the citizenship order, whereas *Hung Chi Doan* correctly held that none exists before visa entry.

In *U.S. v. The Schooner Peggy*, 1 Cranch 103, 110 (1801), Chief Justice John Marshall:

> . . . the court must decide according to existing laws . . .

In *Ex parte McCardle*, 74 U.S. 506, 514 (1868), Chief Justice Chase:

> . . . the general rule . . . is, that 'when an act of the legislature is repealed, it must be considered, except as to transactions past and closed, as if it never existed.'

See also Flanigan v. Sierra County, 196 U.S. 553 (1905).

In *Bradley v. Richmond School Board*, 416 U.S. 696, 711 (1973), a similar case where law was enacted during the pendency of an appeal, Justice Blackmun:

> We anchor our holding in this case on the principle that a court is to apply the law in effect at the time it renders its decision.

When the district court rendered its decision ordering citizenship in 1955, the only pertinent law in effect was the 1952 Act.[13] *See also Thorpe v. Housing Authority*, 393 U.S. 268 (1969); *Hamm v. Rock Hill*, 379 U.S. 306 (1964); *Bruner*

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[13] Section 405(a) of the 1952 Act (66 Stat. 280) provided savings for the 1924 Act unless the new law specifically provided otherwise. *See* § 1429 and *Lehmann v. Carson*, 352 U.S. 685 (1957). Note in *U.S.A. v. Tittjung*, ___ F.3d ___, 2000 WL 1843257 (7th Cir., 2000), the court reviews this method affirming immigration jurisdiction but does not address § 1429.

v. U.S., 343 U.S. 112 (1952); and *U.S. v. Chambers*, 291 U.S. 217 (1934). The court in *U.S. v. Riela*, 337 F.2d 986 (3rd Cir. 1964), interpreting the 1952 Act, stated:

> [T]he legality of the Defendant's naturalization must be determined under the applicable provisions of the statutes at the time of his admission to citizenship.[14]

The same statement is made in *Schneiderman*; Justice Murphy:

> . . . our conclusion remains the same – the Government has not proved by 'clear, unequivocal and convincing' evidence that the naturalization court could not have been satisfied that the petitioner was attached to the principles of the Constitution *when he was naturalized*. (emphasis added, p.142.)

When the naturalizing court rendered its decision granting the citizenship order in 1955, § 1429 specifically provided that *lawfully admitted* for permanent residence shall be in accordance with *this Act*. Therefore, the issue should be whether the citizen was lawfully admitted to this country under the provisions of the law in place when he was naturalized, and not under two abrogated immigration statutes.[15]

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[14] *Riela*, noted in *Fedorenko*, pp. 502, fn. 20, is in conflict with *Tittjung*.

[15] The courts below neither state nor imply that §§ 1427(a) or 1451(a) were retroactive to the date of visa entry, nor that the DPA was saved after expiration, nor how the repealed 1924 Act could be

Congressional intent is manifest and the cited cases concur: the naturalization court must look to "this Act" to find compliance (i.e., "lawfully admitted"), adjudicate status, and issue the order. In its 1955 citizenship order (App. F, p. 164a), the district court

> . . . *found* that Michael Negele . . . had in all respects *complied* with the applicable provisions of such *naturalization laws*, and was entitled to be admitted to citizenship, thereupon *ordered* that such person be and (s)he was admitted as a citizen . . . (emphasis added)

The district court's citizenship order shows compliance under the *naturalization* laws in effect at that time; that is, applying § 1429, it found lawful admission under the provisions of the 1952 Act exclusively.[16]

The Circuit, however, affirmed the denaturalization order that found noncompliance with abrogated *immigration* law, which the naturalization court could not have considered in 1955.[17]

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applied here in light of the clear language in § 1429. *See Landgraf v. USI Film Products, Inc.*, 511 U.S. 244 (1994), and *Lindh v. Murphy*, 521 U.S. 320 (1999).

[16] *See* Certificate of Naturalization requirements, § 1449 (§ 338).

[17] For discussion on the application of the 1952 Act and § 405, *see Shomberg v. U.S.*, 348 U.S. 540 (1955); *United States v. Menasche*, 348 U.S. 528, 536 (1955); *Lehmann v. Carson*, 352 U.S. 685 (1957); and *In the Matter of B—*, 5 I&N Dec. 225 (BIA 1953).

The district court, therefore, denaturalized Negele by applying no law in existence when he was naturalized, thus denying him his constitutional right to due process under the Fifth Amendment.

C. THE INCONSISTENT STANDARD FOR DENATURALIZATION AFFIRMED BY THE CIRCUIT COURT PROVIDES ARBITRARY AND DISPARATE TREATMENT FOR THOSE CITIZENS WHO ENTERED THIS COUNTRY PRIOR TO THE 1952 ACT.

According to OSI's visa-attack theory, had Negele disclosed camp service at naturalization, he would have been denied citizenship because he was not lawfully admitted under the DPA (member of hostile movement); consequently, he could never lawfully become a citizen; and so its reasoning continues. Presume, however, that another immigrant with the same background entered under the 1952 Act and disclosed his camp service at naturalization. His citizenship, on the other hand, would *not* be denied under this legal theory because the 1952 Act had no such visa restrictions as to this "hostile movement" or persecution.[18]

An inquiry into different petitioners at the same swearing-in proceedings in 1955 would find that many individuals were admitted under different immigration laws before the 1952 Act became effective, many of those laws containing admission requirements and restrictions no longer

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[18] In reference to "persecution," the 1952 Act did not apply the IRO Constitution as did the DPA (*see* § 2(b), 62 Stat. 1009), nor did it mention the word "persecution" in 1955. The 1924 Act also did not refer to either. *See* discussion in *Fedorenko*, pp. 495-6, fn. 3.

in effect. While entry requirements may have varied for these individuals, "lawfully admitted" for *citizenship* purposes had to be uniform under the 1952 Act, as mandated by § 1429.[19]

Article I, § 8, cl. 4 and the law require uniform naturalization standards applicable to all citizenship petitioners.[20] Therefore, in 1955 the citizenship requirement – "lawfully admitted" – must have been applied uniformly under § 1429 to the hypothetical 1952-Act entrant and to Negele, as well. However, for denaturalization purposes, Negele's lawful admission is judged *wrongly* on the date of his visa entry, while the 1952-Act entrant's lawful admission is judged *correctly* under the law in effect when he was naturalized. The hypothetical entrant retains the protection of § 1429, judged under "this Act"; Negele, however, does not.

Section 1429 is the statute the naturalizing court followed in 1955 when Negele and others became citizens; it has, however, been ignored by the lower courts in these

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[19] The trial record provides the unrebutted State Department Instructions dated March 2, 1954 (App G, p. 165a), under the 1952 Act and RRA of 1953 (Refugee Relief Act); p. 1, par. no. 1 gives the hypothetical case of a former high-ranking voluntary member of Nazi organizations who was visa eligible if he did not personally participate in atrocities; page 2, par. no. 3, "it does not appear that a visa would properly be refusable under . . . the [1952] Act." *See also In the Matter of B—*, *supra*, pp. 256-8. The district court addresses this issue (App. B, p. 125a).

[20] Under 8 U.S.C. § 1443(a) (332(a)) the Attorney General shall make such rules and regulations for *citizenship* purposes, and they "shall be uniform throughout the United States." Implicit in this statement is the uniform application of these laws to all citizenship-petitioners.

proceedings. *See George W. Bush, et al. v. Albert Gore, Jr., et al.*, 531 U.S. __ (2000).

Having granted citizenship on equal terms, a court may not at a later time revoke that order in an arbitrary and disparate manner, favoring one citizen and denaturalizing another. The Government's method therefore fails to provide equal protection.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that this Court grant the petition for writ of certiorari.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Filed August 17, 2000]

[Submitted May 11, 2000]

No. 99-3522

UNITED STATES OF AMERICA,
Appellee,

v.

MICHAEL NEGELE,
Appellant.

Appeal from the United States District Court for the Eastern District of Missouri

Before RICHARD S. ARNOLD, HANSEN, and BYE, Circuit Judges.

BYE, Circuit Judge.

In one of the most deplorable and grotesque chapters in human history, the Third Reich exterminated vast populations based upon their racial, ethnic, and religious characteristics. As this appeal demonstrates, that genocide continues to affect lives even today. The district court[1] revoked Michael Negele's United States citizenship, finding that Negele misrepresented his war record as a Nazi concentration camp guard in order to obtain citizenship in this country. Negele challenges the adverse judgment on both jurisdictional and substantive grounds. We affirm.

BACKGROUND

Negele, ethnically German, was born in Romania in 1920. In 1942, the Romanian Army drafted Negele into service. In 1943, he moved from the Romanian Army to the German *Schutzstaffel*, ubiquitously shortened to SS.[2] The SS, an organ of the Nazi party, acted as the federal police force in Germany. One part of the SS was called the Waffen SS; in German, *waffen* means "armed." The Waffen SS was further subdivided into two wings. One wing trained as a military formation, somewhat akin to the standing German army. The other wing, the Death's Head unit, operated and guarded the concentration camps. Negele joined the Waffen SS as a Death's Head guard. From 1943 to 1944, he guarded

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[1] The Honorable E. Richard Webber, United States District Judge for the Eastern District of Missouri.

[2] The district court found, based upon overwhelming historical evidence, that the SS and the German army were wholly separate and distinct organizations.

civilian prisoners at the Sachsenhausen concentration camp near Berlin.

The Sachsenhausen camp obtained the labor of prisoners before they died. The camp essentially worked prisoners to death. Death's Head guards at Sachsenhausen kept track of prisoners, guarded the slave-labor detail outside the camp, and brought the prisoners back to the camp at night. Guards were trained to perform various duties. They received weapons instruction in rifles and pistols, drill instruction, ideological indoctrination, instruction in identifying and guarding prisoners and loading and unloading prisoners from trains. The guards at Sachsenhausen were instructed to shoot prisoners who attempted to escape the camp.

Negele received special training with guard dogs beginning at Sachsenhausen. Death's Head guard dogs were used frequently around the prisoner work details. The Waffen SS trained dogs to attack prisoners when they attempted to escape.

In 1944, Negele was transferred (along with his guard dog) to Theresienstadt, a Jewish ghetto located in the former Czechoslovakia. Theresienstadt operated as an internment camp that held Jews and other prisoners awaiting transport to the death camps. Starvation and disease killed thousands of prisoners in Theresienstadt. Negele policed the exterior of the ghetto, attempting to prevent prisoner escapes. Guards at Theresienstadt also ensured the transport of prisoners to the trains destined for Auschwitz and other death camps.

In May 1945, as the Russian army advanced on Theresienstadt from the east, Negele and other guards rid their SS uniforms of all markings that linked them to the Death's Head unit. Negele discarded his SS identification card and uniform badge. As a result, the Russians never discovered Negele's participation in the Waffen SS. Negele was held as a prisoner of war until August 1945. He then lived in various towns in Germany until 1948. Negele ultimately traveled to Stuttgart, where he applied for an immigration visa to the United States.

In Stuttgart, Negele completed the application for an immigration visa with the aid of a clerk. The clerk asked Negele questions in German, then typed his responses onto the application form in English. When the clerk asked Negele about his wartime residences, Negele told the clerk he served in the "Romanian Army" and the "German Army." Negele did not disclose his service in the Waffen SS.[3] The application process required an applicant to sign the application after an interview with the vice consul, and swear to the truthfulness of the application information. Negele never changed his answers about his war record, and he ultimately signed the application.

On February 23, 1950, the government granted Negele an immigrant visa. Less than one month later, on March 22, 1950, Negele arrived in New York. On September

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[3] At trial, Negele indicated that no one asked him about his involvement in the Waffen SS, including the clerk who translated the application on his behalf.

9, 1955, the Eastern District of Missouri granted Negele's petition for naturalization. Negele worked in the aircraft industry until his retirement in 1986. Negele now resides in St. Peters, Missouri.

The government filed a three-count complaint seeking to revoke Negele's citizenship in September 1997. Any one of the counts, if proven, entitled the government to denaturalize Negele. The district court held a bench trial in mid-April 1999. The court's findings of fact and conclusions of law credited the testimony of an expert witness[4] who opined that Waffen SS Death's Head guards were automatically rejected for immigration, whether they served voluntarily or not.[5] The court also relied upon the government's documentary evidence showing that the United States categorically rejected individuals because of their service in the Waffen SS Death's Head guard battalion at Sachsenhausen. Consequently, the court determined that Negele was ineligible for an immigration visa, and therefore ineligible for citizenship. On July 20, 1999, the court issued a comprehensive ninety-page memorandum opinion, entered

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[4] Dr. James Crosby worked for several years in the United States Displaced Persons Commission (DPC). He was stationed in Europe, where he processed many visas.

[5] Negele relied upon his own expert, James McDonald, who served in the DPC as a case analyst approving refugee applications. On cross-examination, McDonald admitted that he had previously testified in another case that Waffen SS Death's Head guards were automatically rejected for immigration visas. The district court properly discredited McDonald's direct testimony to the contrary.

judgment against Negele, and revoked his citizenship. Negele now appeals.

DISCUSSION

A. Subject Matter Jurisdiction

Negele challenges our exercise of jurisdiction. We must resolve jurisdictional questions first. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 95 (1998). Most of Negele's jurisdictional arguments lack merit. We therefore limit our discussion to two points that deserve consideration.

The Immigration and Nationality Act of 1952 provides, *inter alia*, that the government shall

> institute proceedings in any district court . . . for the purpose of revoking and setting aside the order admitting [a] person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation . . . .

8 U.S.C. § 1451(a).

Section 1451(a) confers authority on the federal courts to hear revocation of citizenship actions brought by the government. Negele objects, apparently on the ground that he did not illegally procure the naturalization order. Insofar as Negele's objection is jurisdictional in character, the

objection is unfounded. The government bears the burden of proving at trial that Negele illegally procured his citizenship. That is an "element of the offense," so to speak. If the government failed to prove illegal procurement, the district court would not be divested of jurisdiction. Rather, the district court would enter judgment for Negele because the government failed to prove a critical portion of its case. Negele's challenge is properly regarded as a substantive claim of error, rather than a jurisdictional challenge.

Negele also contends that an Article III court may not examine his visa eligibility. Such review would, he contends, amount to an "unconstitutional judicial encroachment into an exclusive Executive function . . . violat[ing] the constitutional doctrine of Separation of Powers." Negele's argument is specious. The Constitution endows Congress with the power to prescribe rules for securing naturalization. *See* U.S. Const. art. I, § 8, cl. 4. When Congress lawfully delegates responsibility to the executive branch, the executive's activities may be scrutinized by the judiciary to ensure that the executive acts within the scope of its proper authority. *Cf. INS v. Chadha*, 462 U.S. 919, 953 n.16 (1983) ("[executive action under legislatively delegated authority] is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review").

B. Negele's Substantive Claims of Error

The government's complaint alleged three separate violations of the immigration laws, each sufficient to revoke Negele's citizenship if so proven. The district court held in favor of the government with respect to each of the three

counts. Negele offers a melange of arguments contesting the district court's legal conclusions.

We begin with the first count, in which the government alleged that Negele entered the United States in violation of the Displaced Persons Act (DPA), the law in operation when Negele emigrated. The DPA provided that

> [n]o visas shall be issued under the provisions of this Act to any person who is or has been a member of, or participated in, any *movement which is or has been hostile to the United States* or the form of government of the United States.

DPA, ch. 647, § 13, 62 Stat. 1009, 1014 (1948) (emphasis added).

Negele conceded at trial that he had served in the Waffen SS Death's Head guard unit, both at Sachsenhausen and at Theresienstadt. The district court concluded that Negele's service in the Waffen SS constituted membership or participation in a "movement . . . hostile to the United States.". Several courts have determined that concentration camp guards participated in a movement hostile to the United States. *See, e.g., United States v. Breyer*, 41 F.3d 884, 890 (3d Cir. 1994) (collecting cases). We likewise conclude that Negele's service in the Waffen SS Death's Head unit constituted membership and participation in a movement hostile to the United States. Hence, Negele was ineligible for an immigration visa under the terms of the DPA.

Because Negele was ineligible to receive an immigration visa, Negele entered this country with an invalid visa. By entering the United States without a valid entry visa, Negele failed to gain lawful admission to the United States. *See* 8 U.S.C. § 1181(a)(1); *Fedorenko v. United States*, 449 U.S. 490, 514-15 (1981). Because an individual may not be naturalized unless he has first been lawfully admitted for permanent residence, *see* 8 U.S.C. § 1427(a)(1), Negele procured his citizenship illegally, *see id.* § 1451(a).

Although the government bears a "heavy burden" of proof in a revocation of citizenship proceeding, *see Fedorenko*, 449 U.S. at 505 (quoting *Costello v. United States*, 365 U.S. 265, 269 (1961)), a prospective citizen must strictly comply with "all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko*, 449 U.S. at 506. Negele did not "strictly comply" with the prerequisites to naturalization. He entered the country illegally; as a consequence, the resulting court order granting him citizenship was invalid.

The district court properly revoked the order granting Negele citizenship, and properly canceled Negele's certificate of naturalization. We therefore affirm the district court's judgment on Count I. Because each count in the government's complaint is independently sufficient to sustain the district court's judgment, we need not analyze Counts II and III. *See Tittjung v. Reno*, 199 F.3d 393, 397-98 (7th Cir. 2000).

AFFIRMED.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

[Filed July 20, 1999]

No. 4:97CV01810 ERW

UNITED STATES OF AMERICA *Plaintiff*,	)
v.	)
MICHAEL NEGELE, *Defendant*.	)

MEMORANDUM AND ORDER

The Government brought this action pursuant to § 340(a) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C § 1451(a), seeking an order revoking and setting aside the September 9, 1955 Order of the United States District Court for the Eastern District of Missouri admitting Defendant Michael Negele to United States citizenship and canceling his Certificate of Naturalization No. 7554690. As grounds for this requested relief, the Government maintains that Michael Negele, as an SS Death's Head Battalion guard at the Sachsenhausen concentration camp and the

Theresienstadt ghetto, was ineligible to be granted a visa to enter the United States and to receive his subsequent naturalization.

In its Second Amended Complaint,[1] the Government alleges in three counts three violations of the nation's immigration and naturalization laws, each of which calls for tile revocation of Negele's citizenship. In the first two counts, the Government alleges that because Negele was illegible to receive a visa, his entry into the United States pursuant to that visa was unlawful; that accordingly his subsequent naturalization was unlawful under Section 316(a) of the Immigration and Nationality Act of 1952 ("INA"), 8 U.S.C. § 1427(a); and that consequently his citizenship was illegally procured and must be revoked, as provided in Section 340(a) of the INA, 8 U.S.C § 1451(a). In Count I, the Government alleges that Negele entered the United States under the

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[1] On February 23, 1999, the Court granted the Government's motion to dismiss its original Count I, which was based on the Government's allegations that Negele did not qualify a visa because he was a displaced person who was not "of concern" of the International Refugee Organization ("IRO"). The parties agreed that Negele's immigrant visa indicates that he entered the United States as a quota immigrant under the Displaced Person's Act ("DPA") Section 12, rather than as a displaced person within the meaning of the DPA The parties further agreed that quota immigrants under the DPA Section 12 were not treated as "displaced persons" for the purposes of the DPA and therefore were not required to prove that they were "the concern" of the IRO. The Court also granted the Government leave to amend its original Count III to conform to this evidence that Negele was a quota immigrant rather than a displaced person under the DPA.

provisions of the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 1009 ("DPA"). The Government further alleges that Negele's service as an SS Death's Head Battalion guard at the Sachsenhausen concentration camp and the Theresienstadt ghetto constituted membership or participation in a movement hostile to the United States and to the form of government of the United States, making him illegible to receive a visa under Section 13 of the DPA. In Count II, the Government alleges that Negele's willful misrepresentation and concealment of material facts--his SS Death's Head Battalion guard service--for the purpose of gaining admission into the United States made him illegible, to receive a visa under Section 13(a) of the Immigration Act of 1924, P.L. No. 68-139, ch. 190 ("1924 Act").

In Count III, the Government alleges that Negele's service as an SS Death's Head Battalion guard constituted advocacy and acquiescence in activities or conduct contrary to civilization and human decency, and made his admission to the country prejudicial to the interests of the United States, as prohibited by Department of State Regulations, 22 C.F.R. §§ 53.32, 53.33 (1949), making him illegible to receive a visa under the 1924 Act, and thus an unlawfully naturalized citizen, whose citizenship must be revoked pursuant to 8 U.S.C. § 1451(a).

A trial to the Court was followed by extensive briefs, and the following constitutes the Court's findings of fact and conclusions of law.

I. A Historical Review

Dr. Charles Wright Sydnor, Jr. is President and Chief Executive Officer of a broadcast holding corporation which operates five public television stations and one public radio station in central Virginia. Formerly, he was President of Emory & Henry College from July 1, 1984 until January 2, 1992, where he taught an advanced seminar on the history of the Holocaust and the Hitlerian Era of European History. He describes the Holocaust as the organized and systematic effort to exterminated all of the Jews of different nationalities living within Germany proper and the territories in Europe that were either occupied by or under the influence of Nazi Germany between 1939 and 1945.

From 1980 until 1982, he taught as an Associate Assistant Professor at Hampden-Sydney College in Virginia where he taught History of Nazi Germany. From 1972 until 1980, he taught courses in European history, specifically the period 1933 to 1955, at Longwood College in Virginia. From 1969 until 1972, he taught history at Ohio State University at Columbus, Ohio, on the subjects of European Civilization and the History of Modern Germany including World War II. He is fluent in the German language.

Dr. Sydnor received an undergraduate degree from the Emory & Henry College, concentrating in history. He earned an M.A. degree at Vanderbilt University in 1967 and was awarded a Ph.D. degree in 1971. He went to Germany as a Fulbright Fellow in July, 1968, until September, 1969, doing research for his Ph.D. dissertation on the history of twentieth century Germany and of Nazi Germany, specifically. His doctoral dissertation at Vanderbilt was the history of single-armed SS Division, the SS Death's Head Division which was created in November of 1939 from three regiments of pre-war

concentration camp guards. He also had conducted research at the law library at Columbia University. Brigadier General Telford Taylor, the Chief United States Prosecutor at the Nuremberg trials, arranged for a large quantity of materials from those trials to be deposited at the Columbia University Law School, where he taught.

Dr. Sydnor moved to Freiburg in Southwest Germany to review records at the military archive of the West German archival system through a university where he was a graduate student. There, he researched records of the SS Death's Head Division for nine months. He also worked in the main West German National Archives located in Koblenz and conducted research at the Institute Contemporary History at Munich.

Dr. Sydnor has performed research at concentration camp memorials in Europe since 1970, including the Dachau concentration camp in Germany, the Mauthausen concentration camp in Austria, the Auschwitz concentration camp in Poland, and the Museum of the Ghetto Fighters in Northern, Israel. The latter was created in 1948 by the survivors of the armed Jewish insurrection in the Cracow ghetto in 1943. He has also performed research at the United States Holocaust Memorial Museum in Washington, D.C., which he deems a major world-class research center. Most captured German records which came into Soviet possession at the time of the liberation of Germany are now being copied in Europe and deposited in the Holocaust Museum in Washington, D.C.

Before going to Europe in the summer of 1968, he conducted research at the National Archives in Washington, D.C., Modern Military Division Captured Record Branch in

German microfilm records, mainly concentrating on the Nuremberg trial documents. Dr. Sydnor describes the Nuremberg records as being composed of a series of trials that were conducted by the International Military Tribunal at Nuremberg--the so-called German major war criminals including Hermann Goering, Rudolph Hess, Albert Speer, and Ernst Kaltenbmnner, who was Reinhard Heydrich's successor as head of RSHA. The proceedings of the Nuremberg Tribunal were combined and published in a forty-two volume set. In addition, there are indexed Nuremberg documents including records of the foreign office, records of the Minister of Armaments in War Production, records of the SS, and records of the concentration camp system--all of them brought to the United States in 1948 and 1949 and deposited in the National Archives in Washington, D.C.

The second series of trials began in 1946 and continued through 1951 in the American Zone of occupation in Germany--the so-called trials of war criminals. These were trials of less significant Nazi figures including commanders of the SS Murder Commandos, the Einsatzgruppen, prominent SS physicians who performed medical experiments on human beings who were prisoners in the concentration camps, and members of the industrial complex that produced armaments during the war, such as the Krupps. Additionally, Dr. Sydnor notes the importance of American court-martial records covering military trials of individual officers in concentration camps and of individual SS guards. Approximately forty guards were tried together at one time on the grounds of the Dachau concentration camp in the late 1940's. The trial records are under the general designation of a man named Hans Altfueldisch, who was simply the first guard who was listed as the defendant. These trials established considerable

information on the operation of the concentration camps, specifically, Mauthausen and sub-camps.

Later, he worked in the Berlin Document Center where there were 66,000 personnel records of SS officers as well as emigration records kept by the SS. Additionally, he worked in the Wiener Library in London at an institute housing documents of prominent Jewish figures in the Jewish community that were incarcerated at the Theresienstadt ghetto including Leo Baeck. An institute in this London Library bears his name. Additionally, he did some work in the Central State Office for the Land Justice Administration in Ludwigsburg, Germany, an agency of the Federal Attorney General's Office for the German Department of Justice, created specifically to investigate Nazi war crimes. Because of his fluency in German, Dr. Sydnor was able to review all of the documents in the original German language.

Dr. Sydnor explains that the Red Army seized substantial documents in Eastern Europe that have only recently been accessible to western scholars. In addition to the many works he has had published on the subject of Nazi Germany, he has written chapters for a book on Theodor Eicke, who was Inspector General of concentration camps and commander of the SS Death's Head Division until he was killed in Russia in 1943. He has collaborated with other authors on many subjects associated with the Holocaust. He has lectured extensively and delivered papers on the role of the SS Death's Head Division and SS units in the war between 1941 and 1943. He lectured at the Holocaust Memorial Museum in Washington, D.C., at Klagenfurt, Austria, and at many colleges and universities. He has been called upon to review the works of other scholars. He has contributed to

documentaries including a ninety minute PBS production of the biography of Adolph Hitler. Dr. Sydnor is also trustee of the George C. Marshall Foundation in Lexington, Virginia and of the Holocaust Museum in Richmond, Virginia.

During the last thirty years, Dr. Sydnor's research has focused on three primary areas. The first was the history of the individual concentration camps that proliferated after 1939, after the war began and Germany "became seriously engaged in the business of conquest and the persecution of peoples that the Nazis considered to be less than desirable." Trial Tr. I at 36-37. The evolution of the racial policy was developed in Nazi Germany beginning in 1935 with the creation of the Nuremberg laws, the first set of comprehensive discriminatory laws aimed at the German Jews. The second area of concentration was the racial policy itself, and the third area of concentration "overreaches" the first two, focusing on the role of Reinhard Heydrich, a deputy of Heinrich Himmler, the chief executive officer of the SS. Heydrich was head of the security police and the Security Service. After 1939, he was the chief of the Reich security main office, universally known as RSHA. Heydrich was responsible for developing and planning what was called the "final solution to the Jewish question," the European-wide effort to exterminate the Jews of Europe.

Dr. Sydnor reviewed records of the Sachsenhausen concentration camp and the Theresienstadt Jewish ghetto. He also researched and reviewed records relating to recruitment by the Waffen SS in Romania and reviewed and researched records relating to the Waffen SS Death's Head units, which were part of the SS. He has reviewed hundreds of individual personnel records of the Waffen SS membership. He reported

that the records of the Dachau concentration camp are extensive because it was in the area of Germany overrun by American troops in April of 1945, and the SS had not destroyed all of the records before the American units seized the camp. In camps overrun by Russians, records were largely destroyed or simply boxed and taken back to the Soviet Union where the information was not shared with western scholars until recently. The Russians liberated Majdanek in southeast Poland in July of 1944, then overran Trawinki, the SS training camp and concentration camp complex in Poland and seized those records. They also overran Sachsenhausen north of Berlin in late April, 1945. Dr. Sydnor has also researched and reviewed records at Plaszow concentration camp in Poland. He has devoted thirty-four years to the study of the Nazi government and the German SS concentration camps and historical records. His credentials are very impressive. There are only six or seven people in the United States who have Dr. Sydnor's academic speciality qualifications.

II. The Schutzstoffel and the German Army

The Schutzstoffel or SS was an organization of the Nazi party originally created in 1925 as a protection squad for Adolph Hitler as his personal security force to protect him at political rallies and public gatherings. SS, hereafter, will be the reference to Schutzstoffel, which literally means "protection squad." When Hitler came to power in January, 1933, the SS was a very small force that became the foundation of the National Socialist Dictatorship in Germany. It gained control of the police in 1936 and all police forces became centralized in a national police force. Until 1933, Germany was a federal system with police powers vested in

the governments of the collective states making up Germany. After 1936, police forces in Germany were merged with the SS agency of the Nazi party, and all police powers of the country were centralized under Heinrich Himrnler who, in June, 1936, became chief of the German police. A captured German document, circular of the Reich Minister of the Interior, Schutzhaft, dated April 12, 1934, is an order from Himmler's office, the first in a series that refer to the Reichstag Fire Decree of February 27, 1933, the excuse Hitler used to get President Hindenburg to use his authority to abdicate the Weimar Constitution and give Hitler emergency powers. This document set forth conditions under which people could be arrested under a protective custody order and put in concentration camps. As of 1936, a series of mergers were in effect to implement protective custody or detention whereby people presumed to have committed infractions that had nothing to do with committing a crime could be arrested and put in concentration camps. These infractions were political or social. On January 5, 1938, a circular of the Reich Ministry of the Interior was issued from Berlin to all secret state police officers by Gestapo officers in Germany revising the guidelines to clarify the conditions by which protective custody could be used, and providing for what would happen to people who were arrested on a protective custody warrant. In order to defend against all enemies of the people and state, the secret state police could order forced protective custody of all persons who by their behavior posed a danger to the safety and survival of the German people. Only secret state police could authorize protective custody. This circular is the first regulation that restricted implementation of protective custody--incarceration in a concentration camp-by granting this absolute authority only to the Gestapo. From 1934 and thereafter until this

circular, different types of state authorities could issue protective custody warrants and have someone picked up, but after that date, this power was in the exclusive province of the Gestapo. The Gestapo was part of the SS in 1936 as the secret state police force. It was one of several police forces that existed in Nazi Germany. Reinhard Heydrich was chief of the security police consisting of the Gestapo, whose chief was Heinrich Mueller, and the criminal police, whose chief was Arthur Nebe. The Gestapo and the criminal police became the security police with Heydrich as the head. After the Gestapo became part of the SS in 1936, the chief of the Gestapo from then until 1945 was Heinrich Mueller. On September 3, 1939, Heydrich as chief of Security Police and Security Service issued an order setting forth a series of provisions to be implemented by repressing, incarcerating, and killing people who, for whatever reason, resisted the German war effort or cast doubt on Germany's eventual victory.

The term Waffen SS means literally armed SS. The Waffen SS was created in 1939 from two types of SS organizations that had existed from 1933 until 1939. One group was the SS special service troops, organized and trained like a military formation. The other branch of the Waffen SS came from the SS Death's Head units that were responsible for guarding the concentration camps that had been built in Germany between 1933 and 1939. These included the original camp at Dachau, the Oranienburg concentration camp that became Sachsenhausen in 1936, the Buchenwald concentration camp, the Ravensbruck concentration camp for women created in 1938, and the Mauthausen concentration camp built in Austria after Germany incorporated Austria in 1938. Each of the big camps

had an SS Death's Head unit called the SS Death's Head regiment which supplied guards for the prisoners.

The SS had central political and ideological responsibility within the Nazi government charged with protecting the state. It was to protect Hitler and the Nazi state against all enemies, domestic and foreign. After 1939, the SS Death's Head units were responsible for operating and guarding concentration camps for the entire time that the Third Reich existed until May, 1945. The SS, while protecting Hitler and the Nazi state, was responsible for stamping out opposition, including any independent political opinion opposed to Hitler and to the Nazi regime. The SS succeeded by controlling two types of organizations, the Gestapo, from 1933, a universally recognized acronym which was the political police that enforced terror in internal Germany, and the police. In 1936, the Gestapo merged into a larger police organization developed to impose repressive political reform upon the country. Police terror was very effective in a parallel system with the availability of concentration camps which existed outside the traditional bounds of law. The concentration camps stood outside of traditional due process and recognized jurisprudence, incarcerating prisoners at the sole discretion of the police. For example, if someone were overheard saying something negative about Hitler, that person would be considered anti-social, and the Gestapo would draft a protective custody warrant resulting in the person being arrested and placed in a concentration camp with no right to a hearing, no review by any court or other agency, and no due process as recognized in civilized societies. The person would remain in the concentration camp at the pleasure of the Gestapo. This was the Nazi view of protection of the state against its enemies.

By 1939, the SS and the police had merged effectively into one organization, with absolute SS control over both the police and the concentration camp system. When the war began, Hitler adopted this model, applying it to the areas under German control and jurisdiction or occupation.

The warren SS also included combat units with dramatically increased responsibility after September 1, 1939, the beginning of the war. The SS was never part of the German Army. The principal enforcement parties in the German-occupied territories between 1939 and 1945 was not the Army, but the SS and police. By 1938, the SS formations, the police, the SS Death's Head units, and the SS special service troops were well armed and were considered basically paramilitary units. Himmler recruited able-bodied young Germans for service in the police, the Death's Head units, and the SS special service troops. Leadership of the German armed forces would not permit the SS to draft, so Himmler made a deal with the armed forces in a series of negotiations starting in late 1938 and concluding in March, 1940, whereby the SS was permitted to recruit during certain periods of time in certain circumstances among the able-bodied eligible ethnic German population. In contrast, the German army, navy, and airforce drafted Germans within its borders. At the beginning of the war, the territorial boundaries of Germany consisted of what is called the Old Reich or Germany's borders before 1937 and later the Greater German Reich which included German borders after the incorporation of Austria. Military conscription was in effect in Germany, and the army, navy, and air force divided up the draft-age population on a percentage basis, with 66% of the draft going to the army and a lower percentage to the navy and the air force. The SS was not included in the draft.

Uniforms of the various units were distinctive by the insignias. The SS Death's Head units' uniforms were adorned with a skull and crossbones in silver thread on a black background on the right collar tab. Army officers wore quite different insignias. The rank of the person was designated by an insignia on the left collar tab. The Death's Head unit members wore the skull and crossbones with silver-braided cord across the front of their caps.

There was complete administrative differentiation between the SS and the Army. A Waffen SS noncommissioned officer accused of an infraction was under the jurisdiction of the SS courts. He could not be court-marshaled by a unit of the Army, nor was he subject to the authority of the judge advocate general of the German Army. He could not be tried by an air force tribunal or a navy tribunal. He had to be tried by an SS court. Likewise, one serving in the German Army accused of committing an infraction was not under the jurisdiction of an SS court. The pay books, identity cards, medical services, supply and support provisions were different for the SS. The Army and the SS each had its complete system of support, supply, administration, jurisdiction, and jurisprudence.

In early 1942, Himmler approached Albert Speer, Minister of Armaments for War Production, and made a deal which provided that in return for supplying Speer with concentration camp inmate slave labor, Speer would provide armament for the SS units at the rate of 6% of total production including tanks, trucks, machine guns, Howitzers, artillery, hand grenades, and general weaponry. Men serving in the SS were under the authority of an SS officer and were supplied with materials procured through an SS system. Men

that were court-marshaled by an SS court were transferred administratively by an SS office. Support benefits were paid to an SS member's family through SS accounts and SS financial offices.

Himmler was not only Hitler's chief of German police and his trusted lieutenant enforcing German occupation in Europe, he was also Hitler's racial commissar, delegated to carry out Hitler's racial policy throughout Europe. On September 3, 1939, Reinhard Heydrich, chief of the security police and security services, issued a basic order to provide for internal state security during the war setting forth a series of provisions to be implemented in repressing antagonists and providing for incarceration and killing people who, for whatever reason, resisted the German war effort or cast doubt upon Germany's eventual victory in the war.

Hitler and Himmler looked upon ethnic Germans, Volksdeutsche, as those who would provide a source of good racial stock and provide for the production of the future German order in Europe. They considered ethnic German people bound to the greater Germany by special bonds. Ethnic Germans were considered to have duties and obligations to serve and fulfill the ideology of Nazi Germany. Himmler looked upon ethnic Germans as a potential source of recruits for the armed SS, since he could not recruit German men Hitler, too, looked upon ethnic German young males for service as recruits because he could not draft in Romania, Italy, Slovakia, Bohemia, Croatia, Hungary, and Moravia. Hitler saw recruitment of ethnic Germans as a way to get around the provisions of prohibiting him from drafting men within Germany. An ethnic German was considered to be a person of German language, heritage, culture, and family,

whose intellectual and social makeup was German and whose blood was German, but who happened to be living outside the borders of the German Reich. Ethnic Germans were located in virtually every country in Europe in 1939. There was a significant ethnic German community in Romania. There were probably more than one million ethnic Germans living in different communities in the Soviet Union. There was a huge ethnic German community in eastern Ukraine because they had migrated there in the seventeenth and eighteen centuries at the invitation of Russian rulers because their skills were so highly valued. There were approximately one-half million ethnic Germans in Romania in 1939 and several hundred thousand in Hungary. There was a large ethnic German community in Yugoslavia and in the Alpine Mountain region between southern Austria and northern Italy. There was a large ethnic German community in the Baltic areas, particularly in Lithuania and Latvia.

The Foreign Organization of the Nazi party was the first organization to get involved in a liaison function with the German communities outside pre-war Germany for recruitment of ethnic Germans. It disseminated information and encouraged Germans living abroad to return to Germany. The second organization to serve this function was a branch within the SS called the ethnic German Liaison office. This office was under the command of SS General Werner Lorenz, a protégée of Himmler. A third organization under Himmler's direct control as of October 7, 1939, by a special secret decree of Hitler naming Himmler as Reich Commissioner for the Strengthening of Germandom or Reichskommissar Fuer Die Festigung Deutsche Volkstum, permitted Himmler special authority. The SS worked closely with ethnic groups in Romania who were identified as being sympathetic to

Germany. Himmler's letter from Hitler superceded Lorenz's authority to develop relationships with groups. Himmler was in charge of mass transfers of Germans living in eastern Poland and in western Ukraine. In the beginning of the war, Russia and Germany were on the same side, and many ethnic Germans migrated to the homeland. These ethnic Germans were to resettle in the eastern territories of the former Polish state that Germany was going to annex and occupy. The ethnic German Liaison Office and police authorities coordinated their efforts in the East to accomplish the resettlement and repatriation of Germans, particularly from the states of eastern Europe. Roughly 400,000 ethnic Germans were brought to the area under German control. From this number Himler conducted extensive recruitment among young men for SS membership. The ethnic German Liaison office under the SS worked closely to establish community organizations among ethnic German communities in Romania, Hungary, Salvinia, and Italy. The ethnic German Liaison office put money into those ethnic German communities to organize them to identity people particularly sympathetic to Nazi Germany.

The letter given to Himmler by Hitler as the Reich Commissioner permitted him to become involved in the orderly demographic restructuring of Europe which required mass population transfers. The German plan under Hitler was to eventually resettle ethnic Germans throughout Europe into a kind of eastern population shield to protect the German-occupied territories. The German plan after the beginning of the war was to completely reorder the demographic structure by moving ethnic Germans to different locations and to physically exterminate population groups.

During World War II, Nazi Germany and Romania were close allies. Romania was Nazi Germany's second most important friend between 1937 and 1944. Germany's three allied states in Europe were first, Italy, under the dictatorship of Benito Mussolini; secondly, Romania, with its own military dictatorship under Marshal Ion Antonescu, with whom Hitler had a close personal working relationship; and the third most important state to Nazi Germany was Hungary, under a military dictatorship of Admiral Miklos Horthy. Germany never occupied Romania during World War II, nor did it draft or conscript Romanian citizens. While Germany never conscripted in Romania or occupied Romania, it recruited heavily within Romania from 1939 through 1943.

In 1940 and 1941, Himmler, with the assistance of recruiting chief of the Waffen SS, Gottlob Berger, and through contracts in the ethnic German community organizations in Romania, began heavy-handed tactics in Romania without first informing the Romanian government that it was going to recruit thousands of young ethnic Germans to come to Germany to take part in the voluntary labor service for the German government. Approximately one thousand young men were recruited and put on a train and transported to Germany. Once in Germany, they were not part of the German voluntary labor service but were processed into the armed SS units and became members of the Waffen SS. The Romanian government lodged a serious protest. At the same time, General Berger was also doing heavy-handed recruiting in Hungary where he also got into trouble with the Hungarian government which likewise protested his methods for recruiting ethnic Germans. Berger was taking sixteen and seventeen year old kids and convincing them to sign tip to join the Waffen SS. These youths were

then transported from Hungary through Vienna to Germany. Berger was forced to send most of these young men back because they were not eligible under recruitment rules and regulations. These heavy-handed tactics caused problems with two of Germany's most valued allies. Hitler became directly involved in the process to obtain the services of ethnic Germans, making it clear that while he valued the future contributions that ethnic Germans could make from Hungary and Romania to Germany's war efforts, he did not want problems with those countries. An agreement was signed by the German Ambassador in Bucharest and the Chief of the Romanian General Staff on May 12, 1943, after lengthy negotiations which began in February, 1943. These negotiations were conducted under the background of the German sixth army defeat at Stalingrad. The Romanians, in particular, suffered heavy casualties along with Hungarian and Italian units. About two-thirds of the effective unit strength of the Romanian Army was destroyed between November, 1942 and February, 1943. As a result, anti-German sentiment arose in Romania in both the population and the Antonescu government. Romanians began treating ethnic Germans serving in the Romanian Army rather badly. There were numerous acts of discrimination. In 1942, it was brought to Hitler's attention that about 10,000 Ethnic Germans serving in the Romanian Army had actually deserted Romanian units in Russia and asked for permission to come over and join German units because of their treatment by Romanian superiors. Hitler, anticipating potential problems, ordered a comprehensive agreement negotiated with the Romanian government that would settle the question of whether and to what extent Germans living in Romania could be recruited for service either in the Waffen SS or in the German Army. In the May 12, 1943 agreement between the

German government and Romanian government, the primary condition for recruiting was that Romanian citizens of German ethnic origin would have to volunteer for service in the German military complex and that they must be at least seventeen years old by April 1, 1943. There were other limitations upon who could volunteer for service. The Romanian government was concerned, in view of the losses on the Eastern Front, that it might lose trained and experienced military officers and noncommissioned officers in technical specialty fields considered essential for the Romanian Army to function. Groups that were not permitted to be recruited and transferred into either the German Army or the Waffen SS were doctors, pharmacists, and engineers. In addition to restricting categories of ethnic German specialists ineligible for service outside of Romania, the agreement required that anyone who recruited should be out of the country by July 31, 1943. Ethnic Germans who were Romanian citizens recruited for service in the German Army or the Waffen SS could not come back to Romania for military service. Romanian documents for the general staff of the Romanian Army, translated to English and dated September 16, 1943, indicate that anyone who volunteered to serve either in the German Army or the Waffen SS could not leave Romania except under the conditions specified in the May 12th agreement. Anyone leaving under the terms of that agreement could preserve their Romanian citizenship, but those who left illegally would have their Romanian citizenship revoked. Anyone leaving the Romanian Army without a discharge would be considered a deserter who would forfeit Romanian citizenship.

A list was compiled of those eligible to enroll in the German Army or in the Waffen SS. They were called

volunteers in the document. The list then had to be cleared by military authorities in the territorial center in Romania. Ethnic Germans recruited were to retain Romanian citizenship and could return to Romania but could not wear a German uniform while in Romania. The Romanian government was not going to pay wages of anyone joining a German unit, nor pay other benefits for anyone who joined the German Army or Waffen SS. Additionally, the Romanian government was not to assume the obligation for disability payments or pension payments for people who joined a German unit. They would become the responsibility of the German Reich. During the late negotiations between the German government and the Romanian government, a series of telegrams were exchanged indicating major problems in obtaining an agreement for recruitment of ethnic Germans within the Romanian border. Marshal Antonescu had learned that a group of young Ethnic Germans had been recruited under conditions he considered heavy-handed and he ordered the arrest of the recruitment officer in charge.

On May 12, 1943, German ambassador Manfred Von Killinger and the Chief of the Romanian General Staff signed the agreement which provided that Germany would not be permitted to draft or conscript ethnic Germans in Romania either into the German Army or into the Waffen SS. Ethnic Germans could voluntarily enlist in either the German Army or the Waffen SS. The agreement specifically provided that the person must be willing to enlist in either the German Army or the SS. Those persons would go to the local office of the ethnic German community and sign a written declaration that they wanted to volunteer for service. They would be interviewed by a commission consisting of a member of the local German community organization, an SS

officer, an Army officer, and a doctor, either an SS physician or an Army medical corps specialist. The recruit's vital statistics would be taken along with his name, date and place of birth, and he would be given a routine cursory physical examination. If the recruit matched the physical specifications necessary for SS service, he would be processed as an applicant suitable for the SS. If he failed to meet those physical criteria, he would be classified as a recruit for the Army. Anyone not wishing to volunteer for service as an ethnic German under the agreement was not to be subjected to retribution or retaliation in Romania. An ethnic German serving in the Romanian Army was eligible to leave that service and join either the German Army or the Waffen SS by reporting to his commanding officer, his company commander, or his superior officer, and thereafter, by completing a series of procedures, he could gain a discharge from the Romanian Army and be transferred either into the Germany Army or the Waffen SS. If the Romanian commanding officer declined to grant permission, the person was required to remain in the Romanian unit. After May 12, 1943, an ethnic German living in Romania who chose to serve either in the German Army or the Waffen SS was required to serve under the terms of that agreement. Romania at the time was a sovereign state with its own government, its own police, its own military, its own legal system, and its own army.

The Romanian government was very insistent that the terms of the agreement be strictly observed. At the time the German Reich did not possess the infrastructure within Romania to force a draft or engage in conscription. Germany relied upon the Ethnic German community organizations to organize and conduct the recruitment. The German Reich was

without any legal authority to conduct conscription in Romania and lacked the ability to enforce such a policy. Large numbers of people were willing to voluntarily enlist in either the German Army or the Waffen SS. Many ethnic Germans desiring to enter service in either the German Army or the Waffen SS who could not do so under the terms of the May 12, 1943 agreement, deserted their Romanian units, causing Hitler further concern about damage to diplomatic relations between the two sovereign countries.

The July 31, 1943 deadline for recruitment of ethnic Germans in Romania was imposed so Romanian authorities could concentrate on rebuilding the Romanian Army, which had been largely decimated on the eastern front by February of 1943. Although the Germans in the negotiations had imposed the July 31, 1943 deadline as a termination date for recruitment in Romania, because of heavy losses on the eastern front, the Germans continued an even more vigorous recruitment of ethnic Germans from Romania up until the time Romania changed sides in the war in 1944. The evidence is very persuasive that the Waffen SS and the German Army were two entirely separate entities.

III. Sachsenhausen

Sachsenhausen was one of the original permanent concentration camps built in Germany after July of 1934. The other large permanent concentration camps set inside Germany were Dachau, Buchenwald, Ravensbruck, and Mauthausen. Near the Sachsenhausen concentration camp, there had previously been an earlier ad hoc detention center on the same grounds known as Oranienburg. Within one month of ascension to power in Germany in January of 1933,

Hitler persuaded the President of the Weimar Republic to sign an emergency decree suspending civil liberties authorized in the Constitution. The Nazis gained a license to round up political opponents for incarceration. One of the most convenient sites available was the facility located about twenty miles north of Berlin in the town of Oranienburg. Barbed wire was hung around an industrial park enclosing businesses and warehouses. In July, 1934, it became designated as a permanent concentration camp incorporated into the SS office of the Inspector of Concentration Camps, and in 1936, it was renamed Sachsenhausen. Sachsenhausen was also chosen as the location of the Office of Inspector General of Concentration Camps, and from July, 1934 until October, 1939, the Inspector General was Theodor Eicke. He was also the first commandant of Dachau and had built it into what was regarded as a successful enterprise from which it was decided to model a concentration camp system. His office was located adjacent to the Sachsenhausen facility. Many political prisoners were housed at Sachsenhausen. In the 1930's, Eicke, wanting to be assured prisoners inside the camp would have minimal opportunities for escape, developed a marking system at Dachau. A green triangular patch defined the prisoner as a professional criminal. They were trustees of the camp and were called Kapo's. They were the persons the SS relied upon to repress other prisoners. A black patch identified a person as being asocial. A purple patch indicated a person was a Jehovah's witness. A pink patch identified a person as being homosexual. Escape risks were those prisoners bearing a target on their backs. Jewish persons wore a yellow triangular patch. Only Jewish prisoners in the concentration camps were treated worse than homosexuals.

In 1939, the original component of camps was expanded with the construction of Flossenburg and Gross-Rosen in Poland. The camps were originally designed to hold political prisoners, religious prisoners, and anybody deemed to be unacceptable religiously or politically to the Nazi regime, including Catholic priests, the chronically unemployed, prostitutes, petty criminals, homosexuals, and persons belonging to political parties other than the Nazi party. The theory was to hold these individuals behind barbed wire to make them as harmless as possible and to utilize their labor skills as long as they were incarcerated. After the war began the complexion of the concentration camp system changed. The original camps were used by the SS for the administration of its "special treatment" program, a method by which the Gestapo murdered undesirables. Someone passing out leaflets in Berlin, for example, could be put in the Gestapo prisoner headquarters, detained temporarily, interrogated, and the chief of the Gestapo could administer an order for the special treatment to be administered. The person would be taken from Berlin to Sachsenhausen by automobile, taken to a shooting range adjacent to the camp and shot by either a firing squad of SS guards or a Gestapo official.

Once the war began, the German government created a second category of camps that were designed to house not only political prisoners and racial enemies, but potential resisters among nationalist populations of the lands Germany occupied. In Poland, in addition to Gross-Rosen and Flossenburg, Stutthof on the Baltic Sea was designed primarily for detention of Polish political prisoners and members of the Catholic clergy in Poland. Auschwitz contained first one, then two, and finally three camps. The original main camp was used for permanent lockup and

elimination of people in the subject national group that might cause trouble for the German Reich. In 1941, the SS built a second camp at Auschwitz, the Birkenau Extermination Camp, which is universally associated with the Holocaust. It was the large extermination camp within the Auschwitz complex called SS II by the SS. A third camp at Auschwitz was Monowitz or Auschwitz III where the I.G. Farben Company built a huge synthetic rubber plant.

The concentration camps became involved in what the SS called "annihilation through labor." Persons placed there were literally worked to death. Auschwitz, Stuttthof, Gross-Rosen, and all other camps during the war became involved in this death-through-labor program. Germany received the benefit of their labor as they died slowly. The government considered it a waste to simply kill the persons outright and instead wanted to get the benefit of whatever slave labor they could enforce before the anticipated death of the prisoners. The Nazi Government arranged large number of industrial contracts providing for the farming out of business orders from large German corporations to the concentration camps where slave labor was available. Virtually every big name German firm had a contract with the SS to utilize slave labor from one of the camps including Krupp, Siemens, I.G. Farben, Volkswagen, Daimler-Benz, and Messerschmidt.

The huge gas chambers at Auschwitz were built to eliminate large numbers of people quickly. Many were killed upon their arrival, while others were killed after they had performed substantial labor. Subsequently, a gas chamber was built at Mauthausen. Killing camps were also built at Treblinka, Belzec, Sobibor, and Chelmno. These were large facilities built to murder large numbers of people with gas,

rapidly and efficaciously. Sachsenhausen was considered an old camp, or the mother camp. Many people were killed at Sachsenhausen but not in the same way as Treblinka and the other mass murder camps. Sachsenhausen remained primarily a center for the program of annihilation through work.

Prisoners in concentration camps and in ghettos were guarded by Death's Head guards. Wherever there were prisoners, there were Death's Head guards. There was a morning roll call held in roll call square in the camp where all of the prisoners from all of the barracks were lined up and counted by the block leaders. The SS commander of the camp had to be satisfied that every prisoners had been accounted for. Bodies of those who died during the night were dragged out and laid on the ground so they could be physically counted with the living. Prisoners were then divided according to the work schedule for that day which had been drafted by the SS labor allocation officer. The labor allocation officer decided how many men were going to go the aircraft factory, how many were detailed to test shoes, how many were going to the brickyard, and how many would work for other details. For each detail, there had to be a group of guards to go with those prisoners. With fifteen to twenty prisoners, a small guard squad of three to five would be expected. With as many as 200 prisoners marching in a column from the main square of the camp, a larger number of guards would be required. Generally, the rule of thumb was one guard for each ten prisoners. As the war progressed, fewer guards were available. In late 1943, the prisoner count at Sachsenhausen was about 27,000. By 1945, it was over 50,000, with basically no corresponding increase in the number of guards. The first rule was that wherever there were prisoners there had to be guards, and the second rule was that

all guards, in general, were expected to know how to do all different types of guard duty at different hours of the day and night, including standing in the watch tower, walking patrol around the perimeter, guarding labor details, and bringing prisoners back at night into the camp. Their work also included emergency duty like hunting down prisoners trying to escape and accompanying groups of prisoners from Sachsenhausen to and from another concentration camp.

The only exception to duty detail was that the most highly-prized type of specialist in the camps, dog handlers, were permanently assigned to work with that dog in guard activities. Death's Head guard dogs guarded anywhere there was a prisoner where, in the judgment of the camp administration, security would be facilitated by the presence of the guard dogs. Dog handlers were usually more mobile than regular guards. A dog handler would not ordinarily be expected to stand duty with his dog in a watchtower, but would be expected to walk patrol along the border of the camp and accompany work details of prisoners to labor and construction sites outside the camps and return them in the evening. Guards at Sachsenhausen carried either a rifle or a pistol and in some cases both a rifle and a pistol. They were assigned firearms upon arrival at Sachsenhausen. Training of SS Death's Head guards included instruction as to who the prisoners were and why they were imprisoned. Death's Head Guard Battalion members at Sachsenhausen had particular instructions that they were to shoot prisoners to kill if anyone attempted to escape. There was no punishment for guards who shot prisoners, but they were punished if they permitted a prisoner to escape. Guards were rewarded for shooting escaping prisoners. Himmler, Oswald Pohl, head of the SS main economic and administrative office, Richard Glucks,

Inspectorate of Concentration Camps, and camp commandants themselves placed premiums on training both the dog and handlers. Members of the SS guard detachment in a concentration camp who had completed basic training and demonstrated a faculty for dealing with and handling animals, or those who volunteered to be dog handlers, were assigned as trainees to be dog handlers. Dog handler training lasted approximately six to eight weeks. Once trained, the dog handler became responsible for the dog's training, health, feeding, cleaning, and exercising. The dog was intended to bond only to the trainer. If something happened to the dog trainer, the dog was destroyed. No one else was permitted to work with that particular dog and no other SS person could work with that dog once that dog was assigned to a dog handler. SS men from the guard battalion not assigned to the canine unit or who were not dog handlers were not permitted to go into the kennel areas.

One of the captured documents indicates that "dogs that patrol outside the camp must be raised to be rapacious beasts like hunting dogs in Africa." Gov. Ex. 66. Dogs were trained to intimidate and if necessary attack prisoners as well as to track them when prisoners were attempting to escape. Dogs were trained to tear to pieces anyone else except the trainer on the command. In the event of an escape, dog handlers were trained to sic the dogs on the prisoners. An "after action report" from Mauthausen reveals that the dogs were turned loose on a prisoner who had managed to escape for seven hours and that the dogs "ripped him apart." A captured document from Sachsenhausen issued by Arthur Libehenschel states that when out on patrol a dog is to corner and bark at an offender as long as the offender's hands are up and he is not moving, but if he tries to turn away, escape,

tries to attack the dog, or makes a defensive motion of any kind, the dog is supposed to attack and "bite without mercy."

Members of the SS Death's Head Guard Battalion at Sachsenhausen were responsible for guarding the prisoners. All concentration camps had an SS Death's Head Guard Battalion to guard prisoners. The name of the SS Death's Head Guard Battalion at Sachsenhausen was the SS Totenkopfsturmbann Sachsenhausen. It was also known as the Totenkopfwachbataillon Sachsenhausen. SS Totenkopfsturmbann Sachsenhausen and the SS Totenkopfwachbataillon Sachsenhausen were used interchangeably. Totenkopf means Death's Head. Wachbataillon means guard battalion. Sturmbann is another way of saying battalion. The Death's Head units evolved in SS clerical usage through three or four stages of designation. In 1933, they were called the SS guard unit at Dachau; then, they became SS Death's Head units. In German, Totenkopfverbaende means Death's Head unit. In 1938, the designation began to change and they were referred to as Totenkopfstandarten, which means Death's Head regiment. Until late 1939, the big concentration camps each had an entire regiment of SS Death's Head guards in the guard unit. After 1939, with the expansion of the camps and the multiplication of the camps and growth in the number of prisoners, every camp had only a battalion of SS Death's Head guards, so they were no longer referred to as Totenkopfverbaende or Totenkopfstandarten, but were referred to as Totenkopfsturmbannen or simply as the Totenkopfwachbataillon. Wachbataillon, Totenkopfsturmbannen, and SS Death's Head unit were used interchangeably. Regardless of the name, the entity performed

the same function of guarding prisoners at concentration camps throughout the history of the Death's Head unit.

Sachsenhausen was responsible for the administration of all camps. This complex had an SS clinic, SS canteen, and other administrative and support facilities for the Death's Head guard units. Prisoners at the Sachsenhausen camp worked at the brickyards where bricks were produced for construction of SS and other government-related projects. The special armaments depot where ammunition was stored and weapons and vehicles were kept was on the east side of the camp. This facility was a large SS complex and performed many functions for the armed SS units. Small residential homes for senior SS officers were located north of the prisoner area, and a large industrial park was located on the northwestern side of the protective custody camp. Additionally, there was an aircraft repair shop nearby. Near the main gate was the roll call square where the prisoners gathered every morning and every evening to be counted.

Sachsenhausen was under the jurisdiction and the authority of the Inspectorate of Concentration Camps. Theresienstadt, as a Jewish ghetto, was under the jurisdiction and authority of Adolph Eichmann in his capacity as the Specialist for Jewish Affairs in the Gestapo and was director of the Central Office for the Jewish Emigration. Prisoner details were formed at each concentration camp who were charged with ridding the facilities of corpses on a daily basis. When prisoners died at night, bodies would be dragged out onto roll call square so that everyone could be physically counted. Prisoners died from malnourishment, disease, epidemics of typhus and cholera; they were killed by guards, they committed suicide by running into electrified fences, they

were beaten to death on work sites, they were torn to pieces by dogs, they were shot, they were gassed, and they were killed in medical experiments. The Leichencommando, meaning the body commando, of prisoners went around with a cart loading bodies that they took to the crematorium. Other prisoners operated the ovens that incinerated the bodies. At different camps there were mass burials. All of the large camps had at least one crematorium Many had several crematoria. Auschwitz had four crematoria running at capacity that could incinerate 10,000 corpses per day. At Birkenau, a Polish guard reported that the ground to a depth of one and one half meters was mixed with human ash.

From 1942 until the end of the war, the SS maintained two special craft operations at Sachsenhausen. One group was composed of jewelers and watchmakers and one group forged bank notes. This counterfeiting operation involving engravers and printers was Himmler's scheme to attempt to disrupt or bankrupt the economy of Great Britain by making the English pound worthless. Watches were transported to Sachsenhausen from Auschwitz, Treblinka, Sobibor, and Belzec from murdered Jews, where they were repaired and sent on to individual SS members. Prisoners engaged in these two crafts were kept inside in heated facilities during the winter, which was unusual for slave laborers at concentration camps.

Prisoners housed at Sachsenhausen were transported, for the most part, by train. Political prisoners from Berlin were brought there by automobile and truck. Generally, prisoners were processed through the prison administrative office. They were registered by name, given an assignment number, and issued a prisoner uniform and a special designation depending on their country, of origin. A Polish

person, for example, had the letter "P" painted on his uniform with a paintbrush. In August of 1941, 18,000 Soviet prisoners of war were brought to Sachsenhausen by train. They weren't processed as civilian prisoners, individually, but were brought en mass, kept in an open area outside near the crematorium, and then murdered. Arriving prisoners were not given medical attention unless the prisoner had typhus or spotted fever or some disease that would cause the SS to be required to deal with an epidemic. Heads of all prisoners were shaved and their personal effects were confiscated upon arrival.

Prisoners at Sachsenhausen were very poorly treated. The life span averaged about three months. In the morning, prisoners were generally given a coffee substitute which was expected to sustain the prisoner until the middle of the day. Lunch consisted of some sort of soup with a little bread, in the evening, the fare would be bread with a thin slice of margarine and occasionally an ounce or two of meat. Inmates usually received between 500 and 1000 calories a day. These people were working outside in aircraft factories and stone quarries, doing heavy physical labor, and the diet produced a rapid and severe debilitation that eventually resulted in disease and death. Prisoner barracks were large, rectangular buildings resembling flimsy barns. They were single-layer construction board with glass windows and no insulation. They were not airtight and were not heated. Each building had a little heated room at the end where the block leader, the prisoner trustee, was housed. Prisoners usually slept three to a bunk with bunks stacked five layers high. Prisoners wore the same clothes year around, indoors and outdoors, summer and winter. They also received the same rations year around. Winter conditions actually favored inmates because with less daylight, the working day was shorter. The workday was sun

up to sun down, six days a week, or seven days a week when ordered. In June or July, concentration camp inmates were worked eleven to twelve hours per day.

Prisoners were shot for sport by SS guards at Sachsenhausen. An SS guard would snatch a prisoner's hat, throw it across a designated line, and tell the prisoner to get his hat. When the prisoner started walking to get his hat, and crossed the line, the guards would raise their rifles and shoot him and report him as an escape attempt. Prisoners were also punished by dog handlers who would intentionally turn the dogs loose on them. Arthur Liebehenschel, the administrative head of Office Group B, in the SS economic and administrative main office, issued a directive to commanders of the concentration camps at Dachau, Sachsenhausen, Buchenwald, and Mauthausen, indicating Himmler expressly wanted intensified punishment of both male and female prisoners in the camps to be administered on the uncovered portion of their lower anatomy. They were to be hit while their buttocks were exposed. Twenty prisoners from Sachsenhausen were taken to an airfield on the Baltic Sea, strapped in experimental injection seats designed by the air force and shot out of the facility as guinea pigs to test the seats.

Training of guards at Sachsenhausen lasted four to six weeks and included weapon training with a rifle or a pistol or both; close order drill instruction; ideological indoctrination stressing the history of the SS and the history of Nazi Germany; a fairly extensive curriculum of information about prisoners in the concentration camp; instructions about how to guard prisoners; instructions about how to identify prisoners; and instructions about how to handle themselves

when they were the presence of prisoners. They would be tested by walking patrol around the camp in what was called in Sachsenhausen the "tube," which was the walkway between the outer wall of the camp and the inner barbed wire wall of the camp. After 1942, when ethnic German recruits from different areas of Europe became a larger and larger component of the guard units, the SS trainers began paying more attention to language training to make sure that guard trainees understood German commands, marching orders, and intercept orders. *Picture book wrong-right "for the guards in concentration camp service"* illustrated for guard recruits how they were to escort a work detail of prisoners, how they were to load prisoners on a train, how they were to unload prisoners from a train, and how they were to accompany prisoners on a truck. It is a very elementary, basic, simple training document. Pictures or drawings illustrate the wrong way that guards can do something and risk trouble or difficulties with prisoners and the right way to perform duties. A more complicated version of the training manual, called *Service Regulations for Concentration Camps, 1941*, was used through 1941 as a training and reference manual for guards. Training of guards at Sachsenhausen was performed on the grounds of the concentration camp and around the camp.

Waffen SS personnel from 1942 to 1944 almost invariably were processed through what was called the Waffen SS Reserve and Replacement Headquarters for southeastern Europe in Vienna, Austria. They would come from Hungary or Romania and be processed through Vienna where they would be interviewed, have a thorough physical examination, and be assigned to some unit of the Waffen SS or the German Army.

There were inadequate sanitation facilities at Sachsenhausen. Because of their debilitated physical state, many prisoners died of disease caused by lack of sanitary conditions. There was a large open latrine with a single spigot for washing. It accommodated about forty people at a time. There was substantial exposure of prisoners to human waste. There were no bathroom facilities in the barracks. Medical provisions for inmates were nonexistent. Inmates wore wooden shoes or clogs that were designed to prevent the prisoners from being able to run. Some inmates were used to test boots for the military. They were required to exercise to test the limits of the boots. Generally, the prisoners wore out before the boots.

According to war crime records, phosphorous experiments were performed on inmates at Sachsenhausen. Dr. Heinz Baumkotter was the chief SS physician at Sachsenhausen. His superior, SS Surgeon General Ernst Grawitz, inflicted phosphorous burns on prisoners to test different types of ointments and salves that could be used to cure burns or wounds created as a result of burns.

When prisoners became incapacitated and were unable to work at Sachsenhausen, they were frequently taken to a building under the pretense of being prepared for a medical examination, stripped of clothing, put up against a wall as if to be measured, and shot by an SS officer in the back of the neck through a hole in the wall. Large numbers of prisoners at Sachsenhausen, who became too weak to work, were shipped to Auschwitz to be gassed. Punishment at Sachsenhausen consisted of regular beatings administered in public in the roll call square in the evening or in the morning. A prisoner was required to keep count of the number of blows

and if he lost consciousness he was doused with water and the process would begin again. Prisoners were also subjected to "post hangings." A prisoner would have his hands tied behind his back and would be thrust up off the ground from his hands behind his back so that his feet couldn't touch the ground. The full weight of body would hang on the sockets of his shoulders. This punishment produced dislocated shoulders, broken arms, compound fractures of wrists and forearms, and other permanent injuries. The human torment at Sachsenhausen was so extreme that no one at or near the facility with eyes to see, a sense of smell, ears to hear, and the slightest sense of perception could remain impervious to the chronicle of death.

IV. Theresienstadt

Theresienstadt is an ancient city in what is now the Czech Republic. As a fortress town in a military garrison from the late eighteenth century to the end of the second World War, it is a huge granite concrete structure with a small town inside. It is a wide fortress with walls approximately 12 feet thick and 30 feet high. From the air, it resembles a twelve point star. Gun placements are situated on the stars that protrude out of the walls so that cannon fire could be directed at different directions at those attacking the fortress. It is located approximately thirty-five to forty miles north of Prague. The Germans assumed control of Theresienstadt in March, 1939, when they occupied Czechoslovakia. Later, it was converted into a ghetto by the Nazis.

Reinhard Heydrich, Himmler's deputy, was appointed on September 27, 1941, by Hitler as Reich protector of

Bohemia-Moravia, the German designation for what is now the Czech Republic. The Germans occupied the western half of the country, Bohemia and Moravia, as a protectorate, and permitted the formation of an independent government in the eastern half of the country called Slovakia. Monsignor Josef Tiso, a catholic priest, became the head of the Slovak client state of Nazi Germany. In January, 1942, Theresienstadt became a ghetto and the protectorate for Jews being deported from different parts of Bohemia and Moravia. Theresienstadt became not only a holding ghetto for Jews from Bohemia and Moravia, it also became a showplace ghetto. A reference in the minutes of a meeting of the Wannsee Conference held in Berlin on January 20, 1942, in the suburb of Wannsee, presided over by Reinhard Heydrich, which discussed the "final solution," is the first reference to creation of the Theresienstadt ghetto and refers to Theresienstadt as a place where prominent German Jews could be transported, particularly highly decorated Jewish veterans who had served in the German Army during the first World War. They were aging and the SS, for public relations reasons, concluded it would be ill advised to throw them in with the rest of the Jews being transferred to death camps. Theresienstadt was promoted as a dignified, if not comfortable, place for prominent people to be incarcerated.

The idea of either Adolph Eickmann or Reinhard Heydrich was to create a fiction that Theresienstadt was actually a final destination for Jews. In reality, the scheme was to use Theresienstadt as a holding ghetto for Czech Jews who were on their way to Litzmannstadt, in Poland, "on their way to the East," or extermination. Captured German documents reveal that "transport to the east," a commonly used clerical euphemism adopted by the SS, meant "being

shipped to a death camp." Beginning in December of 1942, Jews were deported to Theresienstadt from all over western Europe. Jews were shipped there from Holland, Belgium, France, Luxembourg, as well as Germany, well into 1944. However, the intention was to empty Theresienstadt with the murder of all of the Jews. Once the "Jewish question" had been solved, the plan was to transform Theresienstadt into a purely dramatic showplace city. There were a number of very prominent European Jews sent to Theresienstadt, including Leo Baeck and Benjamin Murmelstein, who actually survived the war. A number of artists and prominent intellectuals with creative ability died there, but a few survived and, as a result, a great deal more is known about Jewish life in that ghetto than in others. There were individual prisoners located at Theresienstadt who were not Jews, but it was basically a Jewish ghetto. Inhabitants were infants to persons in their seventies and eighties.

The head of the Central Office for Jewish Emigration was Adolph Eichmann. He was the facilitator, the administrator of the "final solution." There were three separate commandants at Theresienstadt. Eichmann's deputy was the commandant at Theresienstadt. The first was Seigfried Seidl who served from 1941 until 1942. The second commandant was Anton Berger. He was there from 1942 to early 1944. The third commandant was Karl Rahn who was there from early 1944 to the end of the war. After the war, Seidl and Rahn were caught, captured, and tried by Czechoslovakian nationals.

Prisoners were frequently transferred from Theresienstadt to Treblinka and Belzec. The most common destination for Jews on trains from Theresienstadt, however,

was Auschwitz, which was relatively close. All of the ghettos created in eastern Europe at Bialystok, Lublin, Warsaw, Lodz, Riga, Minsk, and Theresienstadt were located on major European rail lines, capable of handling heavy traffic.

Concentration camps and ghettos were administered under separate offices. Theresienstadt was under the administrative jurisdiction of the Central Office for Jewish Emigration. In 1944, it came under the economic jurisdiction of the parent office of the concentration camp inspector, but it was a facility different than a concentration camp in two respects. Prisoners there were primarily Jewish and everybody there was expected to be killed either by being shipped to a killing center or being worked to death in the enterprises around the ghetto. Theresienstadt served as a holding center for some of the camps in the east. Extermination centers required a holding area because of the large numbers of people being deported from all over Europe, not only western Europe, but northern, eastern, and southern Europe. Jews were being shipped by train from as far away as Corfu and Salonika in Greece, almost one thousand miles, to one of the killing centers. The volume of people was so great that the Germans could not handle the volume on an accelerated basis, making it necessary to retard the process.

Additionally, Theresienstadt served the purpose of giving the Germans camouflage or cover with the civilized world because conditions at Theresienstadt were represented to be tolerable. It was publicized as a paradise ghetto, attracting attention of the Red Cross and the international community. People from the Red Cross went to Theresienstadt on June 23, 1944. Maurice Rossel of the International Red Cross and a group of Danish colleagues

were invited by the SS to go for a tour of inspection after the Germans had carefully prepared an elaborate ruse that would depict life for the inhabitants as comfortable and undisturbed. The propaganda administrator made a movie about Theresienstadt in 1944. At the same time, a carefully selected group of ghetto inhabitants, including people of all ages, were chosen to be present to be seen by the Red Cross delegation. The healthy looking prisoners were picked from among those who had been there for a brief time. Those who had been there for a while were in dreadful shape. Those to be observed were given very careful instructions on what they could say and what they could not say. The buildings were painted, the streets were cleaned and one of the most brutal of the SS sergeants who commanded the ghetto dressed up in civilian clothes in a chauffeur's outfit, playing the role of a chauffeur who drove the car which supposedly carried Paul Epstein, head of the council of elders, around the ghetto. The group left after about five hours, having seen only what they were permitted to see, and were convinced that nothing unpleasant was happening to those in the ghetto. Thereafter, business as usual resumed in August, and in September the SS began clearing the Theresienstadt ghetto. Before the Red Cross arrived, the worst appearing people were put on trains and "shipped to the east." At different times, Jews were taken out of the ghetto into another facility called a small fortress facility where a local SS command post was located. People were regularly executed there. The SS told Paul Epstein that 2,500 young men, highly skilled, were needed to build a new camp. The most able-bodied men, skilled among those at Theresienstadt, were selected by Epstein; however, they were sent directly to Auschwitz to be gassed. Paul Epstein was killed thereafter.

The purpose of Theresienstadt was to accelerate the "final solution to the Jewish question." People sent to Theresienstadt were denied sufficient food, care, and physical necessities to sustain life. Many, particularly the elderly, died there. Others were shipped out of Theresienstadt to the killing centers in the east. Beginning on September 28, 1944, until the end of October, there were ten transports from Theresienstadt involving approximately 20,000 Jews that went directly to Auschwitz. Of the 20,000 people shipped out of Theresienstadt between the 28th of September and the 28th of October, only 3,000 survived the war. Conditions in Theresienstadt were very grim. It was a filthy, overcrowded environment where inhabitants had little to eat, lacked appropriate clothing, and had no access to sanitary facilities. There was widespread disease and hunger. Thousands of people died at Theresienstadt. Bodies were incinerated in a crematorium built outside of the fortress ghetto.

Government's exhibit 85, "English title: Notes from the 10th October, 1941 Conference on the Solution to the Jewish Question" provided on page 5, that "Jews may under no circumstances be buried, instead, cremation is to be conducted locally in a crematorium in the ghetto which is as small as possible and not accessible to the public." At Theresienstadt, the crematorium was built outside the ghetto. The train station was located approximately two to three miles from the ghetto. Arrivals would be met at the platform by SS and Czech guards and escorted on a walk to the ghetto. Those people who were unable to walk from the ghetto were loaded on trucks or carts and transported out. Even late in the war, the SS was determined to follow through on the "final solution." Jews were still being murdered in gas chambers in camps that remained under German control. The biggest

killing center was Auschwitz in Poland. By the first week in October, 1944, most of the people who had been present when the Red Cross came to visit Theresienstadt had been murdered. The SS continued the transports until the end of October.

Himmler then ordered the demolition of the killing facilities at Auschwitz and Birkenau because the Red Army had resumed its offensive in eastern Poland and it was only a matter of time until the army overran the camps. Himmler did not want the Russians to find a killing camp intact, because they had already found Majdanek, generating worldwide publicity. The gas chambers and crematorium at Majdanek were intact.

The last transport from Theresienstadt was October 28, 1944. Most of the people on that transport were gassed. Most of the people who died in Theresienstadt after October 28 died in the ghetto. Theresienstadt continued to exist until the very end of the war. It was in an area bypassed by the tidal wave of the Russian invasion moving to the west. The army bypassed Prague and Theresienstadt as it moved west towards Dresden, then north to Berlin and the final battle of World War II. Transports into Theresienstadt continued until the last week of the war. Theresienstadt, Dachau, and Flossenburg were the only places still not in allied hands, where train loads of prisoners were moved to keep them out of allied hands.

Theresienstadt was guarded by the SS Death's Head unit and the Czechoslovakian uniformed police. At any time the number of guards was as few as 150 men; normally 200 to 250 SS and two to three companies of a special section of

the Czech uniformed police guarded the ghetto. In mid to late 1944, approximately 50,000 prisoners were housed at Theresienstadt. SS Death's Head Battalion guards with dogs guarded the ghetto and the prisoners in their activities, in work details or in movement to and from the train station. The Russians liberated Theresienstadt on May 2 or 3, 1945.

Samuel Hilton testified that he was born in Warsaw, Poland on September 23, 1929, and was deported in a cattle car after being caught in a bunker during the Warsaw ghetto uprising where "[t]here was combat and there was mass murder, killings, burning, and destruction." He was transferred from Umschlagplatz in Warsaw to the Majdanek concentration camp near Lublin, Poland. From there he was taken to Skarzisko Kamienna, "a munitions factory type" where his father died of starvation. As the Russian Army advanced to the west, he was sent to Buchenwald, then on to Berga An Der Elster and finally to Theresienstadt, Czechoslovakia. He was guarded by "SS and there were some Czech police." He was placed in a room 10' x 10' with fifteen or twenty other people, "[i]nto that one room and we just laid there on the dirt floor and that's it." He arrived the last week of April, 1945. He received a small piece of black sawdust bread once each day called "pretke." "Well, half of them there were dead, lying there dead. The other half were basically-- couldn't stand up . . . [t]here were--corpses, they were lying in their own excrement." At fifteen, he was the youngest and had the most strength. No medical treatment was available. No meat, vegetables, or dairy products were given to prisoners and no medicines were dispersed. "There was just death, period, death." The bodies were not removed during the last week before liberation.

He described the guards as being dressed in "typical SS field gray, you know, green-type uniform . . . well, they had that--the Haken Kruez over here, which means the Swastika, and they had a Totenkopf which is the skull and bones, you know, the SS insignia." Each guard Hilton saw at Theresienstadt was armed. "I never seen--I never seen an SS man in two and half years in a camp without a Schmeisser in front of him" When he arrived at Theresienstadt at night, he saw a guard with a dog. He said it was impossible for anyone to escape from Theresienstadt, "First of all, they were half dead, they couldn't walk, you know, they were half dead, ..."

At four o'clock a.m. on the morning of the liberation, Hilton "snuck out" of the building to discover that all of the guards had disappeared. He said it was very quiet and he could not believe that there were no guards present. He observed a tank coming with a red star. As the Russian tank approached. Hilton yelled "cheleva" which is Polish for bread. The Russian in return said "chasie" meaning watch. After the Russian liberation force arrived, Hilton walked all around the camp where he saw dead bodies. "I saw the crematorium, I saw the oven, still open by the way. It was open." He observed fields where the bodies had been buried. Three or four days later, the Russian Medical Corp, consisting primarily of women, arrived. The women wore masks as they tried to separate the living from the dead in the various rooms. They would shake them and push them to see if they were alive or dead. He observed, "big husky women and they were crying, when they saw that." Hilton was the only member of his family to survive the Holocaust. He came to the United States in 1947, within three years became a

United States citizen and served eight years in the United States Air Force including combat in Korea.

Conditions of human depravity were so pronounced in this fortress of death that it would be impossible for a guard stationed there to be ignorant of the events occurring there. Negele's account of his service at Theresienstadt is incredible because it is so inconsistent with all of the other evidence in the case. His attempt to portray himself as an innocent bystander with no knowledge of the atrocities committed there, as well as his denial of knowledge of more benign day-to-day activities there, severely challenge his believability as a witness.

V. Michael Negele

The Sachsenhausen concentration camp and the Theresienstadt ghetto were liberated by the Russian Army. As already noted, records captured in May, 1945, have not been available to western authorities until relatively recently. Some of those captured records pertain to Negele.

In his testimony, Negele confirms that he was born on May 5, 1920, in Gross-St. Nikolaus, Romania. Negele is a resident of St. Peters, Missouri. He retired as an aircraft worker in 1986 when he was 66 years old.

Negele was drafted into the Romanian Army in February, 1942. He went from service in the Romanian Army to service in the Waffen SS as a Death's Head guard in November, 1943. He went to Vienna where he was given a physical by German military physicians. He was sent to Sachsenhausen along with thirty to forty other men. At

Sachsenhausen, Negele was trained as a dog handler with a German Shepard assigned to him. He claims that in May of 1944, he was transferred to Theresienstadt.

Negele reports that he stayed at Theresienstadt until the Russian Army advanced on Theresienstadt and some Czechoslovakians took them to a schoolyard, then inside a hall, where they stayed until the Russian soldiers came. He was in Russian custody until August when he was released. After being released by the Russians, he took a train to eastern Germany to Goertlitz. He went to Greitz where he stayed until 1948. He was married in Greitz in 1947 to his wife Pauline. He attempted to escape through west Germany in 1948 where he was apprehended with his wife by an east German guard. His wife was five months pregnant at the time. He surrendered his watch and other valuables and was permitted to continue to Ankioson where they were united with some relatives. For approximately two weeks or more, they stayed in Stuttgart in the American zone where they lived in a refugee camp while making contact with his sister in the United States. He went to Stuttgart to get a visa, which was issued. Negele told the person processing his visa application that he had served in the war, that he was drafted in the Romanian Army and was drafted in the German Army. Negele says he was telling the truth to the official. He said no one asked him about the Waffen SS. He immigrated to the United States in March of 1950. At that time, his wife was pregnant with their second child. He is the father of five children.

When admitted to the United States, he was hired to sweep floors. Later, he worked for an aircraft contractor. He admitted serving in the SS Death's Head Battalion at

Sachsenhausen. He understands that Totenkopf means Death's Head. He admits being in the SS Totenkopfsturmbann. He acknowledges that he was listed as being a member of the Totenkopfwachbataillon. He remembers his job was as a wachposten (guard).

Negele went into the Romanian Army on February 20, 1942. Before entering the Army he was employed as a baker with his uncle. He was trained in the Romanian Army as a gunner and stated that he was good with a rifle. Negele denied being transferred to a motorized battalion in October, 1942, while in the Romanian Army. He claims he was in a military bakery in Bucharest. He denies deserting from the Romanian military, contrary to Government's exhibit 34 which indicates that he did desert. The form reports that he deserted on May 14, 1943. Government's exhibit 35 indicates he was transferred to the front while in the Romanian Army. When asked if he did not want to be sent to the front in the Romanian Army, he said that he did not understand. He claims that that information is inaccurate and that he was transferred to a Romanian bakery where he remained until he was drafted into the German Army. He received one mark per day as an SS Death's Head guard. In the Romanian Army, he "got nothing." Tr. III at 535.

When Negele went into the SS, he was issued an ID card which he threw away when the Russians were advancing on Theresienstadt so they would not get it. "We all threw it away, not only me." Tr. III at 502. Government's exhibit 35 reveals that his arms training in the Romanian Army included rifle model 98, pistol, and hand grenades. It further shows that from November 1, 1943 to June 5, 1944, his service was in the SS Death's Head guard battalion at Sachsenhausen and

on June 5, 1944, he was transferred to Plaszow concentration camp. Negele denies ever going to Plaszow.

Government's exhibit 64 is an extract from Transfer List, 9 June 1944, compiled in Sachsenhausen. The document came from the archives in the Russian Federation. It is a document from the captured Russian collection of SS documents in the Soviet archive in Moscow. Negele's name appears on the second page where he is listed as number 38 as Negele, Michael, SS private, date of birth, May 5, 1920. The German designation for private is "schutze." The document lists groups of SS men who had been transferred from Sachsenhausen to other units. Negele is listed with a group of men who were transferred to the SS Death's Head Battalion at the concentration camp at Plaszow located in Cracow, Poland.

Government's exhibit 63 is "English Title: Change of Strength for the Month of June, 1944." It is the monthly summary for movement of guard personnel for the month of June, 1944, dated July 3, 1944. Entry number 27 through 76 of exhibit 63 on page 3 shows 50 people or 50 guards per the change report of June 9, 1944, were transferred to the Plaszow concentration camp. The change report of June 9 is exhibit 64. Negele was number 38 on that list. Exhibit 63 refers back to the transfers on June 9 that are listed on exhibit 64.

Government's exhibit 65 is "English Title: Attachment to the Transfer Report of 19 June, 1944." This document came from the Russian Federation archives, specifically from the Center for the Preservation of Historical Documentary Collections in Moscow. Exhibit 65 is an interim report filed

by a clerk in the personnel office at Sachsenhausen as a follow-up to the transfer-out on June 5th which was listed on the transfer dated June 9th. The document is dated June 19th and lists a group of men transferred out of Sachsenhausen to Plaszow, with the names and ranks of the individuals. On exhibit 65, Negele is listed as number 24. He is identified as an SS private. His birth date is listed as May 5, 1920.

Plaszow was originally a forced labor camp built for Polish political prisoners and Jewish families from the Cracow ghetto. It was organized in 1942 under the SS and police leader for the Cracow district. In March, 1943, under orders from Himmler, the Jews from the Cracow ghetto were pulled out and some were sent to Auschwitz while others were sent to other killing centers. The majority of the able-bodied Jews in the Cracow ghetto were moved out of the ghetto three or four miles to Plaszow, the forced labor camp, which later became a full-blown concentration camp under the jurisdiction of the SS and police leaders for the Cracow district. As with many other camps, German companies formed contracts with the SS in the Cracow district for Jewish slave labor for the production of goods. The most notable of the companies at Plaszow was run by Oscar Schindler. The camp was transferred to the jurisdiction of the Concentration Camp Inspector and placed under the authority of Oswald Pohl in 1944. The commandant named to run the camp as an SS camp Amon Geoth, one of the most brutal of the commandants of the concentration camps. In September, 1944, he was arrested by the SS and court-marshaled for corruption, malfeasance, dereliction of duty, and for abuse of his office. He engaged regularly in the personal abuse of prisoners. He personally beat prisoners and shot prisoners from his villa on a bluff overlooking the campsite. In June or

early July, 1944, the SS began to clear the camp because the Soviet advance which began on June 22, 1944, had perforated the central sector of the German front in western Russia and pushed the Germans back to central Poland. The SS wanted to transfer able-bodied slave laborers to other concentration camps and kill those who were too weak so they would not fall into the hands of the Russians. The weak were transferred to other camps and killed, most going to Auschwitz. The Germans wanted to eliminate witnesses. There were SS Death's Head Battalion guards at Plaszow. According to exhibit 35, by an entry of 5 June, 1944, Negele was transferred on June 5, 1944, to the SS Death's Head Battalion at the concentration camp at Plaszow. Exhibits 35, 63, 64 and 65 indicate that Michael Negele was a common entry on all of the exhibits as having been transferred from the SS Death's Head Battalion at Sachsenhausen to the SS Death's Head Battalion at Plaszow on June 5, 1944. Contrary to Negele's claim that he never went to Plaszow, the evidence is very persuasive that Negele was transferred to Plaszow from Sachsenhausen

Government's exhibit 35, in English translation, says "Camp Service Guard--Michael Negele. n.d. (1943-1944.)" This is a personnel card kept in the administrative office of the SS Death's Head Battalion at Sachsenhausen and used in the concentration camp system to record personal information for the individual SS guard. Personnel cards like this came into existence when the camps were created in 1933. The card records the individual's name, date of birth, place of birth, country of birth, marital status, date individual entered the service in the Waffen SS, the unit to which the individual was assigned and the individual's religious preference, home address, nearest living relative, and occupation. Exhibit 35

indicates that Negele entered the Waffen SS on November 1, 1943. He was assigned to the SS Death's Head Battalion, Sachsenhausen. He is ethnic German and his "Suitability Category: fit for combat. Last Name: Negele. First Name: Michael." He was born on the fifth day of May, 1920, at Gross St. Nikolaus in the district of Prinz-Eugen in Romania. He is recorded as being single and his religious preference is noted. His home address is Gross St. Nikolaus, Bacarescu Street, #17. The unit to which he is assigned is SS Totenkopfwachbatalion Sachsenhausen. Records show that Negele was transferred on June 5, 1944, to the SS Totenkopfsturmbann concentration camp, Plaszow, from the Death's Head Battalion at Sachsenhausen. The card indicates that his SS service employment is wachposten or guard. Negele was sworn in on November 1, 1943 and completed basic training on December 4, 1943. The card indicates he received training in the Romanian Army where he served from February 20, 1942 to October 17, 1943, where his last rank was private first class. He had been trained in the use of the rifle, model no. 98, or the equivalent of a German Mauser. He also had weapons training with a pistol and had been trained in the use of the hand grenade.

Government's exhibit 61, with a certificate of translation to English, with a title of "Extract from Strength Changes in the Month of November, 1943," dated December 2nd, 1943, is a captured German record that the Soviets seized when they captured Sachsenhausen concentration camp in 1945. It was acquired from the Osobyi Archive in Moscow. The record was to keep an accurate count of the number of guards and changes in the strength of the guard component at the Sachsenhausen concentration camp. Negele is listed as number 21 on the strength chart. The birth date

listed is 5 May 1920, the same date of birth that was listed on exhibit 35.

Government's exhibit 34 "English Title: Registration Form of Mihai Negele." An attachment to the exhibit declares that the information came from the military archives of the Ministry of Defense of Romania. Negele admits that he was known in Romania as Mihai. From the form, he admits that he was born on May 5, 1920, of German Ethnic origin and that his mother's name was Magdalena. It indicates that Negele was sworn into the Romanian military on March 29, 1942, in the Second Mountain Ranger Regiment. His suggested mobilization role was "gunner" where he obtained "good" results. His profession was listed as a baker and that his rank was private. He was granted leave from the Romanian Army from June 21 until July 29, 1943. The form reveals that he was transferred to "Avian Lancu" a motorized battalion, on July 24, 1943. On May 8, 1943, the form reports that he left for the front with second marching company and on May 14, 1943, was reported as a deserter from the 22nd mountain regiment. Negele denies that he left for the front or that he was deserter. He was asked:

Q: You didn't want to be sent to the front in the Romanian Army, did you?

A: I don't understand what you say.

Q: Did you want to go there, to the front where the fighting -

A: There was nothing like this. What I said before, I got transferred to Romanian bakery and that's where I stayed till I got drafted in the German Army.

Tr. III, at 494-95. The form, as part of exhibit 34, indicates that he was struck from the roster on January 2, 1945.

Negle admits that he was trained at Sachsenhausen with about forty SS Death's Head guards and dogs. Negele claimed that "-- nobody was armed where I was trained. Nobody was armed over there where they can shoot." Tr. III at 513. Negele was asked:

Q: Being at Sachsenhausen wasn't like being at the front where the armies were fighting.

A: It was different over there.

Q: In fact, Mr. Negele, you were never a combat soldier–

A: No.

Tr. III at 514. Negele claimed that for the entire time that he was at Sachsenhausen, his only job, from December, 1943, until June 1944, was to train with the dog. He claimed that he was being trained outside of Sachsenhausen. In his deposition, he was shown a photograph of SS Death's Head guards with a dog inside Sachsenhausen. In his deposition, he admitted recognizing the guard tower. While looking at the picture during his testimony, he said in response to the question,

Q: This is a picture of Sachsenhausen?

A: I not know if it's a picture of Sachsenhausen or not. I not know that.

Negele's deposition transcript reflects that he was asked, in reference to the picture,

Q: You recognized that as a guard?

A: It's right here, see, the guards, here, the watchmen here. Of course, I recognize. There was way on the top over there.

Later in his testimony, he was asked, in reference to his deposition,

Q: Does that help you remember that this is a picture of Sachsenhausen?

A: Yes.

Tr. III at 517.

He was asked in his testimony,

Q: You used to walk with your dog at a place like this at Sachsenhausen, didn't you?

A: Yeah, I just got trained in Sachsenhausen.

Tr.III at 518.

In his testimony, Negele was asked,

Q: Mr. Negele, you testified during your deposition that the dogs at Sachsenhausen were trained to catch prisoners to keep them from escaping; is that correct?

A: Well, what they did - yes.

Q: Okay. And they were also trained to bark at prisoners, correct?

A: They never barked when they got trained, no.

Q: You never heard the dogs bark?

A: I never heard them barking, no.

Q: And if a prisoner tried to get away from the dog, the dog was trained to attack the prisoner, right?

A: Well, we have to let them loose from the leash and they stop them to escape, that's about it. They was not trained to bite them, just to keep them from escaping.

Q: All right. And you were trained to let go of the leash and to let the dog chase down the prisoner?

A: Yes, but not to bite them.

Tr. III at 519-20.

However, Negele indicates that he was aware of his dog's proclivity to bite. In his trial testimony, he noted the following:

Q: You say that you were sent from Sachsenhausen to the Theresienstadt Jewish ghetto.

A: Directly, yes.

Q: Okay. And you took your dog with you?

A: Yes.

Q: And he had a muzzle on him so he wouldn't bite anybody?

A: Oh, only when I was on civilian train, but not over there.

Q: On a civilian. Were you afraid he might bite a civilian?

A: Yes, I would be. I not know.

Q: Okay. And he rode with you on the same car?

A: Yes.

Q: Like right next to you?

A: Next to me, yes.

Tr. III at 536.

He was also asked,

Q: What if the prisoner picks up a rock or starts hitting the dog. This is your dog. What are you supposed to do?

A: I don't know that answer because I was trained that the dog was supposed to -- to watch that they not escape, but concerning biting, I don't know about this exactly. I don't know if the dog would bite or not.

Tr. III at 524.

Negele was asked,

Q: You weren't supposed to talk to the prisoners.

A: How can I talk, I never been inside?

Q: If you came across a prisoner, you weren't supposed to talk to them, never.

A: Never, no.

Tr. III at 528.

Negele was asked,

Q: Okay. And the prisoners worked in the factories, didn't they?

A: No, I not know about this.

Q: You didn't know that people worked in the factories?

A: No, not at all.

Q: Did the SS soldiers work in the factories?

A: I not know this. No, there was no SS soldier worked in that factory either.

Q: Did anybody work in the factory?

A: No, not SS. There was civilians working over there.

Tr. III at 530.

Negele was asked,

Q: All right. The question was, could prisoners leave that black triangular area if they had a guard with them?

A: There was a guard inside, yes.

Q: There was a - would the guard go out with them?

A: No.

Q: The prisoners left by themselves?

A: All what I see, and I said before, there was only, what I see, the barracks over there, but I never see what happened inside the wall.

Q: Okay. You said you never saw what happened inside the black triangle area?

A: No.

Q: The question is, did you see the prisoners leave the black triangle area with guards?

A: No.

Q: Did you see prisoners leave the black triangle area without guards?

A: No.

Q: So then you are saying you never saw prisoners leave the black triangle?

A: No.

Tr. III at 532-33. Negele admits that when he arrived at Theresienstadt he was still in the Death's Head unit. He was asked,

Q: And I believe you testified that your uniform had a Death's Head on the hat?

A: Yes.

Q: And it had marking on the lapel?

A: Some on the side here (indicating).

Tr. III at 537.

When he arrived at Theresienstadt another guard from Sachsenhausen accompanied him with his dog. At Theresienstadt, he said that he and his dog patrolled the

outside of the ghetto. He recalled seeing prisoners at Theresienstadt who spoke different languages. He recalls that "they got some kind of prison clothes on, like some kind of stripe, you know." Tr. III at 539. He acknowledged that prisoners worked, and after work, a guard from inside would transport them back to the barracks. Negele denies seeing any prisoners coming and going from Theresienstadt.

Q: Now, in your time that you worked at Theresienstadt, did you see large groups of prisoners arriving or leaving?

A: I not see any of that.

Tr. III at 543.

Negele said that he was stationed at Theresienstadt from June, 1944 until May, 1945. He was asked,

Q: Did you ever see a dead prisoner?

A: No.

Q: Not at any time during your stay there?

A: No.

Q: Now at the end of the war, Mr. Negele, when the Russians were coming, you said that you threw away all of the markings on your uniform that said that you were in the Death's Head unit, right?

A: Yes.

Q: You took them off of your uniform and you got rid of them.

A: Yeah, there was not much to throw away, yes.

Q: You threw them away?

A: Well, all of us, you know.

Q: Okay, and you also threw away your ID card, you said?

A: Yes.

Q: But you kept your basic uniform?

A: Oh, yeah. I need something to wear.

Tr. III at 545-46. Later, Negele was asked,

Q: You can see that. That's the bigger one you are looking at. Now, Mr. Negele, after you were released from the Russians as a POW -- first of all, the Russians didn't know you were in the Waffen SS, did they?

A: No, they never ask.

Q: They never asked?

A: No.

Q: And you didn't tell them?

A: No.

Tr. III at 547. Negele's denial of obvious facts destroys his credibility.

VI. The Visa Application

Government's exhibit 95 is Negele's visa application dated February 23, 1950. The visa was issued on the same day. Exhibit 95 contains a statement, "Since reaching the age of 14 years, I have resided at the following places during the period stated." Under that is typed, "1942 - 1945 with German and Romanian Army."

Negele admits that he served in the Waffen SS and the SS Death's Head guard unit at Sachsenhausen in Germany and at the Theresienstadt Jewish ghetto in Czechoslovakia. Negele was asked at trial,

Q: "German Army" is not an accurate statement of what kind of service you did, correct?

A: I don't know about that part.

Q: You don't know about that part?

A: No.

Q: Well, when you went into the SS, Mr. Negele, you testified that you got an SS uniform, right?

A: Yes.

Q: You got SS Death's Head markings on your uniform?-

A: Yes.

Q: -- and on your hat. That you were ordered to get an SS tattoo, but you didn't get one.

A: No, I refuse that.

Q: So you were in the Waffen SS and you knew you were in the Waffen SS.

A: Yes, I know I was.

Q: Now, your testimony is that you never told somebody named Charles Wootten that you were in the Waffen SS. Is that your testimony?

A: I don't know that name.

Q: You don't know that name. This is the name on the bottom of this form.

A: Oh, that form.

Q: Yeah.

A: No, I not remember that . . . .

Q: Mr. Negele, I don't know that we have an answer. Is it your testimony, looking on this form, do you see the name, "Charles Greenwood Wootten, American Vice Consul?"

A: Yeah, I can see that.

Q: Are you saying that you never told Mr. Wootten that you served in the Waffen SS?

A: I never see him.

Q: You never told Mr. Wootten that you guarded the Theresienstadt ghetto with a dog?

A: But I never see the man.

Q: You never told Mr. Wootten that you spent eleven months in Czechoslovakia at Theresienstadt?

A: And I said before, I never seen that man . . . .

Q: Did you think that if you told a Vice Consul that you had been in the Waffen SS and that you had been a guard, that that might hurt your chances of coming to the United States?

A: All what I -- you are saying when I filled my visa application?

Q: Yeah.

A: That's what you're asking me?

Q: Yes.

A: All what I said, I served in the Romanian and German Army when I filled out my visa.

Q: Okay and you said that you were in the German Army. Is that what you told the man who typed this out?

A: Yes.

Q: But you said that you were in the Waffen SS.

A: No, they never ask me about that.

Q: Okay, so you told the man who typed this form that you served in the German Army, right?

A: Yes, and the Romanian.

Q: And Romanian?

A. Yes.

Q: Now, Mr. Negele, during your deposition, you testified that you knew that guards might not be allowed to come to the United States. Do you remember saying that?

A: I never said that.

Q: Okay. Well, let me point it out, then. Referring to your deposition on May 12, 1998, page 77, excuse me one moment. Here it is. "Question: Do you remember during this application process telling anybody that you were a guard in the Waffen SS? Answer: Never -- see, honestly, when they would bring the paper, the German paper, and they say when you be anything, a guard, you commit crime or not, you can't go the United States." Does that refresh -- ?

A: I never said that.

Q: This is wrong?

A: Pardon me?

Q: This is wrong? This deposition transcript is wrong?

A: I not remember that.

Q: Okay. So you don't remember saying that . . . .

Q: I'll rephrase it again, if I can. You knew when you filled out this application that it was important where you had served during the war, right?

A: Yes.

Q: Because you knew that -- it depending on where you had been stationed meant you couldn't come to the United States.

A: I was not thinking about that.

Q: You weren't thinking about that. Well, let me read you part of the transcript then. This is page 77 "Question: And was that because if you did tell them, you didn't think you could come over here to the United States? Answer: Well, say when I said -- answer again. "Well, say, when I said it was in the paper you can't come here, and when I find out from the official, the United States official, the German can not go, according to where they have been stationed, to

what my things was, what I have to do, when they said yes I could come, and when they say no, I would stay over there."

Tr. III at 555-59. The following testimony was then given:

Q: Now, I'm not quite sure what that means, but what it says is depending on where you have been stationed, was important, wasn't it?

A: I don't know what you mean by that, where I was stationed . . . .

Tr. III at 560.

Later, Negele gave the following testimony:

Q: You just kept people from leaving the ghetto, right?

A: Pardon me?

Q: You just kept people from leaving ghetto, right?

A: All what I did, we had to guard them so they wouldn't leave.

Q: You just guarded them, guarded them so they wouldn't leave?

A: Yes.

Q: And if something bad happened to these people inside the ghetto, you don't think that was your fault, do you? ...

A: Not at all, no.

Tr. III at 561-62. During the re-direct examination, Negele's attorney, Warren Hoff, inquired of Negele,

Q: Okay. Almost done. Okay. It is very important now, the Judge needs to know, when you put down that you served in the German and Romanian Army, were you lying to the person who took the information?

A: All what I -- all what I said, where I served was in the Romanian and German Army. They never asked me other questions, other things, not military.

Q: But the Judge needs to know what was in your head at that point?

A: Pardon me?

Q: The Judge needs to know that you were thinking at that point. Were you trying to fool them?

A: No, not really.

Tr. III at 570. On re-cross-examination, Negele was asked,

Q: Mr. Negele, when you were at Sachsenhausen and you were at Theresienstadt, you knew that you were not in the German Army, right?

A: Well not this time, I was, for the Romanian, I was in the Romanian Army, '42. When I went up with them on the visa, I was -

Q: And then -- I'm sorry. Don't let me cut you off. And then you went into the Waffen SS?

A: Well I got drafted from Vienna to Waffen SS, yes.

Q: And you knew when you were in the Waffen SS that you were in the Waffen SS?

A: Pardon me?

Q: You had -- you testified before you had an SS uniform.

A: Yes sir.

Q: So you knew from your uniform you were in the Waffen SS?

A: Yes.

Q: You had an SS ID card?

A: Yes, I got that.

Q: You knew from your ID card you were in the Waffen SS?

A: Oh, yes.

Q: When you were about to be captured, you threw all of that away so the Russians would not know you were in the Waffen SS?

A: Yes.

Tr. III at 571-72.

The Court asked the following questions:

Q: When you were training the dog, did your supervisors or someone else ever provide a live person for the dog to chase or for the dog to -

A: Oh, yes, there was, yes, there was in the training, yes.

Tr. III at 572. A follow-up question by Negele's attorney was in the following form:

Q: Did the dog ever bite that person?

A: No, he just grabbed him, you know, in the training.

Tr. III at 573.

Dr. James Crosby worked for the United States Displaced Persons Commission ("DPC") in Germany after World War II. He had served with the military police in the counterintelligence corps in the war. He was a security officer of a refugee camp in Weatorff near Hamburg. His next position was assistant to the security officer, Head of Security for Europe. He then became Chief of Security for Europe. He continued to serve in the United States Displaced Persons Commission until 1952. The general role or function in Europe of the DPC was processing of applications for immigration under the Displaced Persons Act of 1948. Dr.

Crosby explained that Section 13 of the Displaced Persons Act of 1948 refers to membership or participation in a movement hostile to the United States or its form of government. Applicants for eligibility under the Act were rejected for immigration under this section of the Act if they had been a member or participant in a movement hostile to the United States or its form of government. There was what was called an "inimical list" associated with the Displaced Persons Act. It was a list of organizations or movements considered hostile to the United States government. An applicant who was a member of one of the organizations listed in the inimical list was automatically rejected for immigration. The Waffen SS was included in the inimical list; therefore, members of the Waffen SS were not eligible to admission to the United States. Government's exhibit 106 adds Totenkopf to the list of inimical organizations.

The Act made no distinction between voluntary or involuntary membership in a hostile movement. Any membership or participation in any such hostile movement was a cause for mandatory disqualification. The very structure and legislative history of Section 13 indicates that either voluntary or involuntary membership in any such hostile movement is a mandatory cause for denial of a visa. Later, the rules were changed so that some members of the Waffen SS could be considered for favorable visa application, but the rules never permitted a member of the Death's Head unit to be eligible. Government's exhibit 107 reflects that the rules were eventually relaxed regarding Waffen SS, in that only officers with rank of major and above were subject to disqualification. However, this relaxation did not effect members of the Totenkopf, who remained ineligible.

Under the DPA's movement hostile provision, the policy of the DPC was to reject applicants who had served as concentration camp guards. If an applicant had been a concentration camp guard, the unit in which he had served did not matter under the movement hostile provision. Additionally, the policy of the DPC under the hostile movement provision was to reject applicants who had served as guards at a Jewish ghetto.

James McDonald, called by Negele, served in the United States Navy in the Pacific during World War II. He worked for the DPC from July, 1950 to July 1952 as a case analyst approving refugee applications to immigrate to America, administering the Patriotic Oath they had to take, and performing investigations when required. He testified that he had handled as many as 1,000 cases. It was McDonald's testimony that persons drafted or who entered the German Army involuntarily would be eligible for immigration.

On cross-examination McDonald was asked by the Government's counsel the following questions:

Q: Do you remember testifying in a deposition in this case in August of 1998?

A: Yes, I do.

Q: And do you recall testifying at that deposition that, in your view, the Office of Special Investigations, United States Department of Justice, does work that you quote "cannot see as legitimate or honorable"?

A: That's right.

Q: Did you write a book called *John Demjanjuk, the Real Story?*

A: Yes, sir, I did . . . .

Q: In that book, did you state that the Office of Special Investigations, United States Department of Justice, had a, quote, "sordid reputation"?

A: I believe I did.

Q: Did you state in that book that the Office of Special Investigations used tactics that were "reprehensible" quote-unquote?

A: Yes, sir.

Q: Did you state that the United States Department of Justice, Office of Special Investigations was monstrous and manipulative?

A: I believe I said that.

Q: Did you state that, this is the quote, "the only American agency that works hand-in-hand with the KGB, the Russian secret police."

A: I believe I said that.

Q: Do you think that the KGB is involved in the case against Michael Negele?

A: I believe they worked hand-in-hand with the OSI to drum up this business.

Q: And do you believe that the KGB is involved in the case against Michael Negele?

A: I just said that, didn't I?

Q: Specifically, with respect to Michael Negele, Mr. McDonald?

A: Yes.

Q: You believe that OSI has worked with the KGB -

A: Yes.

Q: -- in the case against Mr. Negele

A: Correct.

Q: And you state in your book that the United States Department of Justice is unusually servile in its relationship with the KGB?

A: I believe I said that.

Q: And did you recently testify in your deposition that the office was subservient to the KGB?

A: I'm starting to wonder. It's six of one and a half a dozen of the other.

Q: Well, did you testify at your deposition the office was, quote, "subservient to the KGB"?

A: I believe said that.

Q: And did you write in your book that the United States literally forced the State of Israel to be partner in crimes of destroying Americans?

A: Yes, sir.

Q: Now, could you explain something to me? If the Department of Justice forces Israel to do its bidding, but the Department is in turn servile and subservient to the KGB, does that mean that KGB uses the Department of Justice to control the State of Israel?

A: It's conceivable, as long as we're in this business -

Tr. III at 580-83.

McDonald was asked the following question:

Q: Mr. McDonald, people often talk about The Holocaust and how ten or more million people died in it. Do you believe that it happened?

A: I believe a small amount of it happened. I cannot believe that six million people were killed, especially when new evidence is going out like at Auschwitz that only 77,000 were killed, not 4 million, et cetera et cetera.

*****

Q: Uh-huh. Well, do you believe that tens of thousands, if not hundreds of thousands of Jews were murdered at Auschwitz?

A: No.

Q: Do you believe that any Jews were murdered at Auschwitz?

A: Of course.

Q: Very many?

A: Well, there was a severe typhus plague that killed a lot of them and various diseases, sicknesses.

Q: So am I to understand you that the Jews who died at Auschwitz died of typhus or died of plague, or-

A: Yeah.

Q: Died of disease, but none were deliberately murdered en mass by the Nazi authorities?

A: I didn't say that.

*****

Q: That your understanding is that of the number, whatever that number may be, of Jews that died at Auschwitz, that they died from typhus, from the plague, or from other diseases as opposed to systematic extermination by the Nazis?

A: A lot of them did, yes.

Tr. III at 591-93

*****

Q: Did you testify at your deposition that a person could be rejected under Section 13 of the DPA because of his individual actions?

A: I believe so.

Q: Do you recall testifying during the trial of *United States v. Karl Linnas* in the Eastern District of New York?

A: Yes, I remember very clearly. He went through my office in Augsburg.

Q: And do you recall testifying in that case, quote, "It was my understanding that we were to reject any Waffen SS people summarily"? Did you say that?

A: I don't remember that.

*****

Q: Did you make those statements during the trial in the *Linnas* case?

A: I think I did.

Q: Shortly after that, did you testify in the *Linnas* case when asked if you recalled any people who had served in the

Waffen SS and were found eligible by the DP Commission, as you testified, you couldn't recall any Waffen SS members who were found eligible.

A: I don't recall that.

Q: Again, I direct your attention to page 487 of the transcript . . . .

A: All right. I'm reading it.

Q: Have you finished reading it?

A: Yeah.

Q: And did you indeed testify in the *Linnas* case that you could not recall "any people who had served in the Waffen SS who were found eligible by the DP Commission"?

A: I evidently made the statement.

*****

Q: Did you testify in the *Linnas* trial that there were two things of significance to you in your capacity with the DPC in evaluating an applicant's military service that, one, they never fought against the United States; and two, quote "they were never involved in cruelty such as the operation of a concentration camp"? Did you testify to that -

A: Yes.

Q: In *Linnas*?

A: Uh-huh.

Q: Did you testify in your deposition that if a man served as a guard at a camp or cruelty tookplace, he would not be eligible for a visa?

A: If he was right in that camp.

Q: Did you testify to that?

A: Yes.

*****

Q: And were you subsequently asked in the *Linnas* trial what would have happened if the applicant had disclosed quote, "merely that he had been a guard at a camp at which these events took place and stated to you that he was merely a guard"? And did you answer, "I would have felt the same way"? Did you testify to that in the *Linnas* trial?

A: If the guard was in the immediate proximity.

Q: Did you testify to that in the *Linnas* trial?

A: I believe so.

Q: Were you next asked in the *Linnas* trial what effect that information would have had on your determination of eligibility and did you answer, quote, "I would have rejected the applicant"?

A: Repeat the question, please?

Q: Were you next asked in the *Linnas* trial what effect that information would have had on your determination of eligibility and did you answer, "I would have rejected the applicant"?

A: What information?

Q: The information that an individual had merely been a guard at a camp.

A: Yeah.

Tr. III at 597-602.

Q: And what did the DP Commissioner state with respect to voluntariness?

A: Do you want me to read the paragraph?

Q: No, I think it's sufficient to paraphrase it. In fact, let me help you even further. Isn't it a fact that DP Commissioner stated that there is no distinction between voluntary and involuntary service?

A: This, I believe, was at the very beginning of the DP Commission.

Q: And isn't this what it says?

A: What's the date on this?

Q: If you will look at the front of this, Mr. McDonald, you will see there is a date of August 11, 1950.

A: Right.

Q: And isn't that after Michael Negele entered the United States, if you know?

A: Yeah.

Tr. III at 603-04.

Q: All right. We are finished with the report. Those documents, Mr. McDonald, that you have in front of you are labeled (a) through (u). Could you look at (c), please sir?

A: (Witness complies.)

Q: Why was this individual rejected?

A: He was definitely a member or participated in any movement which was hostile to the U.S.

Q: And what was that movement?

A: I will have to look for it here. "Belonged to the SS Totenkopf guard battalion at Sachsenhausen."

Q: If you would look at 109(I), please Mr. McDonald.

A: (I). This is signed by Joe May.

Q: And why was the applicant in (I) rejected?

A: "He served with the SS Totenkopfverband"

Q: And where did he serve, Mr. McDonald?

A: Where?

Q: Yes.

A: Sachsenhausen.

Q: Now if you would look at (l).

A: It jumps to (r) here. (1). Okay, this is Jacob Koch.

Q: Why was this individual rejected?

A: Subject served with "SS Totenkopf," looks like "Wachbatalion."

Q: At what camp?

A: Sachsenhausen.

Q: Could you look at exhibit (p)?

A: I can't seem to find this one. Here it is.

Q: Why was this individual rejected?

A: "This case before finalization before subject had the opportunity to appear" - I'm sorry,. "He was a member of the Allgemeine SS (SS Totenkopf Sachsenhausen) . . . ."

Q: And lastly, Mr. McDonald, if you look at (u).

A: (Witness complies.) The last page. Okay. "Subject served in a Totenkopfdivision of the Waffen SS, stationed at Sachsenhausen."

Tr. III at 605-06. McDonald contributed little in support of Negele.

VII. Conclusions of Law

Count I - Membership or Participation in a Movement Hostile

A decision to revoke Negele's naturalized citizenship, as the Government urges the Court to do, requires the utmost care and serious inquiry. Because the loss of American citizenship can have "severe and unsettling consequences," *Fedorenko v. United States*, 449 U.S. 490, 505 (1981), the Supreme Court holds the Government to a heavy burden of proof in a proceeding to divest a naturalized citizen of citizenship. The evidence justifying such a denaturalization must be "clear, unequivocal, and convincing "and "not leave the issue in doubt." *Id.* (quoting *Schneiderman v. United States*, 320 U.S. 118, 125 (1943).[2]

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[2] Contrary to Negele's assertions, this standard does not equal or surpass the criminal "beyond a reasonable doubt" standard. *United States v. Kairys*, 782 F.2d 1374, 1379 n.8 (7th Cir. 1986). It is, nonetheless, intended to be a strict standard, demanding stronger proof than the "mere preponderance" standard. *Id.*; *see also California ex tel. Cooper v. Mitchell Brothers' Santa Ana Theater*, 454 U.S. 90, 93 (1982) (citing denaturalization cases for the principle that "the Court has never required the 'beyond a

While the precious nature of the right of citizenship places a heavy burden on the Government to divest a citizen of this right, the Supreme Court "has also recognized that there must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship. Failure to comply with any of these conditions renders the certificate of citizenship 'illegally procured,' and naturalization that is unlawfully procured can be set aside." *Id.* at 506 (citing 8 U.S.C. § 1451). Furthermore, a court cannot weigh equitable considerations--such as that a defendant has led an uneventful life for several decades in this country--in its denaturalization decision. *Id.* at 517.

8 U.S.C. § 1451 (a), the statute under which the Government seeks denaturalization of Negele, provides:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation . . . .

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reasonable doubt' standard to be applied in a civil case").

Section 316(a) of the INA, 8 U.S.C § 1427(a)(1) provides that:

> No person, except as otherwise provided in this title, shall be naturalized unless such applicant . . . has resided continuously, after being lawfully admitted for permanent residence, within the United States . . . .

Section 101(a)(20)of the INA, 8 U.S.C. § 1101(a)(20), defines the term "lawfully admitted for permanent residence" as meaning "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws . . . ." Lawful admission for permanent residence requires that the individual possess a valid unexpired immigrant visa upon entry into the United States. *See* 8 U.S.C. § 1188(a); *Fedorenko*, 449 U.S. at 514-15. Federal courts have concluded that defendants who were ineligible for visas were never lawfully admitted into the United States, making their subsequent naturalization illegally procured under § 1451(a). *See U.S.v. Breyer*, 41 F.3d 884, 889 (3d Cir. 1994); *Kairys*, 782 F.2d at 1377, 1384; *U.S.v. Koziy*, 728 F.2d 1314, 1318-19 (11th Cir. 1984).

The parties agree that Negele's immigrant visa indicates that he entered the United States as an ethnic German quota immigrant under the Displaced Persons Act ("DPA") Section 12 and the 1924 Act. The Government asserts that Negele's service as an SS Death's Head Battalion guard at the Sachsenhausen concentration camp and the Theresienstadt ghetto constituted membership or participation in a movement hostile to the United States and to the form of

government of the United States, making him illegible to receive a visa under Section 13 of the DPA,[3] which provided:

> No visa shall be issued under the provisions of this Act to any person who is or has been a member of, or participated in, any movement which is or has been hostile to the United States or the form of government of the United States.

In *Breyer*, a federal court of appeals considered whether defendant's service as a member of the SS Totenkopf[4]

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[3] The Court has previously found that the Government submitted convincing evidence demonstrating that Section 12 quota immigrants were subject to "hostile movement" disqualification under Section 13 of the DPA. Memorandum and Order, at 10 n.5 (Feb. 26, 1999).

[4] *Totenkopf* means "Death's Head." The SS Death's Head Guard Battalion was the Nazi designation for Waffen SS members who served as concentration camp guards. Documents from the time, as well as courts ruling on Nazi denaturalization cases, refer to the titles of concentration camp guard units variously as: Waffen SS Totenkopf Verband; SS Totenkopf Stuba; Totenkopf SS Division; SS Totenkopf Wachbattalion; Death's Head Battalions; SS Totenkopf unit; SS Totenkopf Sturmbann, and so forth. Dr. Sydnor explained that these various designations all refer to the SS Death's Head units that guarded Nazi concentration camps. Trial Tr. I at 198-200. Negele argues repeatedly that these various terms designate separate and distinct entities, but he offers no persuasive evidence to support his assertions.

constituted membership in a movement hostile to the United States under Section 13 of the DPA and was "firmly persuaded" that it did. The court noted that the Displaced Persons Commission ("DPC") considered the SS Totenkopf to be such a movement and further remarked that at Auschwitz, where defendant was a guard, the SS Totenkopf had committed atrocities against the Polish people, United States allies. *Id.* In *U.S.v. Ciurinskas*, 148 F.3d 729, 731-32 (7th Cir. 1998), the Seventh Circuit stated, "Had [defendant] indicated [to the Counter Intelligence Corps of the U.S. Army] that he was in the [Schutzmannschaft ("protective force")] he would have been admitting membership in an organization considered as 'inimical,' and thus hostile, to the United States." The court concluded, "We see little difference between being a concentration camp guard . . . and being a member of a force dedicated to the extermination of large numbers of civilians as was Ciurinskas. His membership in the Schutzmannschaft is also sufficient to show that he participated in a membership hostile to the United States, as defined in § 13 of the DPA . . . ." *Id.* at 734. *In U.S.v. Stelmokas*, 100 F.3d 302, 314 (3rd Cir. 1997), the Third Circuit found that the Lithuanian Schutzmannschaft was on the state department Inimical List. The court then held that even without evidence of any atrocities committed personally by defendant, his "service as an officer in the Schutzmannschaft disqualified him from obtaining displaced person status and a visa, as the Schutzmannschaft was a movement hostile to the United States." *Id.* (citations omitted).[5]

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[5] To support his assertion that the Government must prove that Negele committed hostile acts against civilians, Negele cites

The DPC's "List of Organizations Considered Inimical to the United States" includes the Waffen SS. Gov. Ex. 99 at 22. Revisions to the Inimical List in July and October, 1951, added the Totenkopf Verband of Germany. Gov. Ex. 106 at 2; 103 at 3. Additionally, a November 28, 1950 DPC memorandum clarifying the DPC's policy of considering members of the Baltic Waffen SS units for admission to the United States stated: "Policy of the Commission has been to consider either voluntary or involuntary membership in the Waffen SS, except in the Baltic Waffen SS, as a bar per se under Section 13." Gov. Ex. 102 at 2. Negele makes much of the fact that in 1951 the DPC lifted the per se bar against visas for those persons who had been members of the SS divisions of the German Armed Forces; however, the American Consulate General memorandum in question stresses that these instructions apply only to persons who were members of military units, not political units. Gov. Ex. 105 at 2. The memorandum explains, "the Consulate General considers only Waffen SS divisions to have been military units of the SS, and all units of the Allgemeine SS and the Waffen SS Totenkopf Verbaende (Death's head Units which guarded concentration camps) to have been political units." *Id.* A 1951 DPC memorandum also distinguishes members of SS military units, whose rank and file members could be considered for visas, from members of the "Allgemeine SS

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two cases, *U.S v. Lindert*, 907 F. Supp. 1114 (N.D. Oh. 1995) and *U.S.v. Sprogis*, 763 F.2d 115 (2nd Cir. 1985). Because neither of these cases considered the hostile movement provision of Section 13 of the DPA in their discussions, they are inapposite to the Court's analysis of Count I.

and the Waffen SS Totenkopf-Verbaende," who could not. Gov. Ex. 107 at 2.

In addition to these uncontested documents, former Vice Consuls Wootton and Buffum stated that vice consuls relied on the Inimical List and testified unequivocably that an applicant who had served as an SS Death's Head Battalion guard at a Nazi-operated concentration camp or ghetto would have been automatically disqualified from receiving a visa. Wootten Tr. at 44; Buffum Tr. at 23-24, 61-62.

Negele relies primarily on two documents to support his argument that his role as an SS Death's Head Battalion guard would not necessarily have eliminated his visa eligibility because of membership or participation in a movement hostile to the United States. First, he submits an August, 1949 Office of Intelligence Research report entitled: "Criteria for Determining Political Desirability of Ethnic Germans," which provides in pertinent part:

> The Nazi Paramilitary and Elite Organizations
>
> This category would include the SA, SS, and their equivalents outside Germany for ethnic Germans. With the exception of those persons who were actually forced into the *Waffen-SS* or a Home Guard, persons who were members of these organizations must be considered as having belonged to a movement hostile to the United States.

Def. Ex. NNN-4. Negele asserts that this document indicates the State Department's intention that members of the Waffen

SS who served involuntarily not be considered as participants in a movement hostile. However, the title page of this report includes the following significant caveat: "This is an intelligence report; nothing in it is to be construed as a statement of U.S. or departmental policy or as a recommendation of any given policy." The Court is not persuaded that this report, which declares its own lack of authority, undermines the reliability of the Government's documentary and testimonial evidence that voluntary or involuntary membership in the Waffen SS Death's Head Units was an automatic bar to visa eligibility.

Second, Negele offers a May, 1949 DPC memorandum which reiterates that persons excludable under Section 13 of the DPA are not visa eligible and then provides:

> Note that political activity only is here contemplated unless the applicant served in the Waffen Schutzstaffel and is unable to submit persuasive evidence that he did so under duress and that he engaged in no Nazi party activity.

Def. Ex. GGG-B2. Negele maintains that this document also demonstrates that members of the Waffen SS who served as concentration camp guards could have been allowed to enter the United States if they could prove that their service was involuntary. The Court disagrees. Most importantly, this memorandum refers only to the Waffen SS--and differentiates Waffen SS service from political activity. As discussed *supra*, an American Consulate General memorandum states that the Consulate General considered "all units of the Allgemeine SS and the Waffen SS Totenkopf Verbaende (Death's head Units

which guarded concentration camps) to have been political units." Gov. Ex. 105 at 2. Accordingly, the Court believes that this DPC memorandum offered a possible duress exception only to members of Waffen SS military units, not to SS Death's Head Battalion guards at Nazi-operated concentration camps, who were considered members of political units. Moreover, Negele has offered no evidence to suggest that he served as a guard under duress. While he claims that he was conscripted into SS service, his evidence is not persuasive. He admits that he worked a set daily schedule, received a regular paycheck from the Nazis, and enjoyed time off in which he left the camp or ghetto and went into nearby towns to relax. Enjoyment of these privileges and evidence that he deserted the Romanian Army when ordered to the Russian front at a time when the German and Romanian Armies were being destroyed, and volunteered for service in the Waffen SS, undermine any claim of duress on Negele's part.

Finally, while neither the Government's immigration policy documents nor the vice consuls indicated that the per se bar of visas to former SS Death's Head Battalion guards included an exception if service were involuntary, Negele asserts that such an exception existed. Assuming, arguendo, such an exception for involuntary service, the Court does not believe that Negele's service was involuntary. In its findings of fact, the Court detailed the history of the agreement between Romania and Germany that the Nazis would not draft Romanian citizens into military service. Setting Negele's less than credible testimony that he was drafted into the SS against Dr. Sydnor's extensive testimony as to the reasons why Negele could not have been so drafted, the Court concludes that Negele served voluntarily as an SS Death's Head

Battalion guard. The Court rejects Negele's claims of being drafted into the Waffen SS as unbelievable.

The Court accordingly finds that the Government has proved by clear, unequivocal, and convincing evidence that SS Death's Head Battalion guards were considered members ofa movement hostile to the United States and were ineligible to receive a visa under Section 13 of the DPA. It is undisputed that Negele served as an SS Death's Head Battalion guard at the Sachsenhausen concentration camp and the Theresienstadt ghetto; therefore, the Court concludes that he was ineligible to receive a visa under Section 13. Negele did not have a valid visa when he entered the United States.

Count II - Material Misrepresentation

As noted *supra,* the parties agree that Negele's immigrant visa indicates that he entered the United States as an ethnic German quota immigrant under DPA Section 12 and the 1924 Act. The Government asserts that Negele's misrepresentation of his SS Death's Head Battalion guard service on his visa application made him inadmissable under the 1924 Act. Section 25 of the 1924 Act provides:

> [A]n alien, although admissible under the provisions of the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act.

Section 13(a) of the 1924 Act states:

> No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa. . . .

In *Fedorenko*, the Supreme Court stated that courts had consistently held that Section 13(a) "required a valid visa and that a visa obtained through a material misrepresentation was not valid." 449 U.S. 490, 515 (1981). Therefore, if the Government proves by clear, unequivocal, and convincing evidence that Negele obtained his visa through a material misrepresentation, the Court must find that Negele's visa was invalid under Section 13(a) of the 1924 Act.

The Court begins its analysis by determining whether Negele misrepresented his wartime activities on his visa application. Negele's Application for Immigrant Visa and Alien Registration asked Negele to specify his places of residence since the age of 14, His response was recorded as including, in pertinent part, "1942-45 with German and Romanian Army." Furthermore, Negele testified at trial that he told the man who typed his application that he had served in the Romanian and German armies. Tr. III at 557. Obviously, this response is inaccurate, as Negele did not serve in the Germany Army, but SS Death's Head Battalion guard. It is this inaccuracy on which the Government bases its argument that Negele misrepresented his wartime service on his visa application. Negele vigorously contests the Government's argument, asserting that he has insisted throughout this case and at trial that he answered truthfully all questions put to him by United States officials. Negele did admit at trial, however, that he was aware that he was in the Waffen SS:

Q: So you were in the Waffen SS and you knew you were in the Waffen SS?

A: Yes, I know I was.

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Q: Okay. Now, you have said several times, Mr. Negele, that you served in the Waffen SS, right?

A: Yes.

Tr. III at 555 and 554. Negele attempted to reconcile the disjunction between his telling the clerk typing his visa application that he had served in the German Army and his acknowledging that his actual service was in the Waffen SS by maintaining that no one asked him about the Watten SS:

Q: Did you think that if you told a Vice Consul that you had been in the Waffen SS and that you had been a guard, that that might hurt your chances of coming to the United States?

A: All what I -- you are saying when I filled my visa application?

Q: Yeah.

A: That's what you're asking me?

Q: Yes.

A: All what I said, I served in the Romanian and German Army when I filled out my visa.

Q: Okay. And you said that you were in the German Army. Is that what you told the man who typed this out?

A: Yes.

Q: But you said that you were in the Waffen SS.

A: No, they never asked me about that.

Tr. III at 557.

Q: Okay. You had to go to Stuttgart to fill out some papers -

A: Yes.

Q: -- and get your visa?

A: Yes.

Q: Now, when they asked you about your residences over a period of time, where did you tell them that you were?

A: Sir, there was a German person who was filling out the application and I tell him where I was served, I told him I served the Romanian Army, drafted, and was drafted in the German Army, but he never asked me otherwise nothing.

Tr. III at 472-73. Alternatively, Negele avoided questions pertaining to his perception of the difference between the

Germany Army and the Waffen SS by refusing to answer them directly.

Q: ... So "German Army" is not an accurate statement of your service, is it?

A: Pardon me?

Q: "German Army" was not an accurate statement of what kind of service you did, correct?

A: I don't know about that part.

Q: You don't know about that part?

A: No.

Tr. III at 555.

Q: Okay. You thought of the Waffen SS as the Germany Army.

A: Nobody asked me about that.

Tr. III at 473.

Q: Mr. Negele, when you were at Sachsenhausen and then you were at Theresienstadt, you knew that you were not in the German Army, right?

A: Well not this time, I was, for the Romanian, I was in the Romanian Army, - '42. When I went up with them on the visa, I was -

Q: I'm sorry. Don't let me cut you off. And then you went into the Waffen SS?

A: Well I got drafted from Vienna to Waffen SS, yes.

Tr. III at 571. Ultimately, Negele admitted that he concealed a significant aspect of his wartime service--where he was stationed:

Q: And you knew, Mr. Negele, that depending on where you were stationed, it might affect whether or not you could get a visa, right?

A: Pardon me?

Q: You knew when you filled out your visa application that where you had served might mean you couldn't get a visa, right?

A: I not understand.

Q: I'll rephrase it again, if I can. You knew when you filled out this application that it was important where you had served during the war, right?

A: Yes.

Q: Because you knew that it -- depending on where you had been stationed might mean you couldn't come to the United States.

A: I was not thinking about that.

Q: You weren't thinking about that. Well, let me read you part of the transcript then. This is page 77.

"Question: And was that because if you did tell them, you didn't think you could come over here to the United States?

Answer: Well, say, when I said-

Answer again. Well, say, when I said it was in the paper you can't come here, and when I found out from the official, or the United States official, the German cannot go, according to where they've been stationed, to what my things was, what I have to do, when they said yes I could come, and when they say no, I would stay over there."

Now, I'm not quite sure what that means, but what it says is depending on where you've been stationed was important, wasn't it?

A: I don't know what you mean by that, where I was stationed.

Q: Where you were a guard. That was important when you filled out the application, wasn't it?

A: All what I did, I never said where I was stationed. All that I put in the visa, I was served in the German and the Romanian Army from this year to this year, but I never say nothing else.

Q: But according to the answer in the deposition, you knew that where you had served was important at the time you filled out the application.

A: I not -- I was not thinking about this at all.

Q: Is the transcript over here wrong? Is the deposition transcript wrong?

A: I not know.

Tr. III at 559-60 (emphasis added). Negele testified that he knew that he had served in the Waffen SS. Negele also testified that he told United States officials only that he served in the German and Romanian Army. Negele further testified that he limited the information he offered to United States officials, declining to divulge where he had been stationed. In *United States v. Stelmokas*, the Third Circuit found that defendant had misrepresented his employment and places of residence on his visa application by stating that he had been a teacher and laborer during the war years, when he actually served in the Lithuanian Schutzmannschaft and the German Luftwaffe. 100 F.3d at 315. Discussing what constitutes a misrepresentation, the court stated, "In our view, if you falsely represent that your employment is one thing when your actual employment is completely different, then you have concealed your true employment." *Id.* at 314. By representing that he was in the German Army when in fact he served as an SS Death's Head Battalion guard at Sachsenhausen and Theresienstadt, Negele concealed his true employment and thus made a misrepresentation on his visa application.

Moreover, Negele's argument in his post-trial briefs that he did not know that there was a significant difference between the Germany Army and the Waffen SS is unpersuasive. Dr. Sydnor testified extensively about the

separateness of the German Army and the Waffen SS. He also testified that an Ethnic German in Romania who volunteered to serve Germany was either processed as an SS applicant, or if he if failed to meet the physical specifications for SS service, would be classified as an army recruit. Most significantly, in his testimony, Negele never claimed to have been ignorant of the difference between the German Army and the Waffen SS. Instead, he evaded questions from both the Government and his own lawyer which sought to elicit his perception of the relationship between these two entities. As the testimony quoted *supra* demonstrates, Negele responded to such questions by either stating that no one asked him about service in the Waffen SS or by deflecting the question with an unresponsive answer such as, "I don't know about that part." The Court holds the Government to a heavy burden of proof in this denaturalization action. That heavy burden does not, however, license Negele to again conceal the truth of his actions by giving evasive answers. The Court finds that Negele's answers together with all of the evidence in the case demonstrate that he indeed knew that the German Army was distinct and separate from the Waffen SS.[6] Notwithstanding

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[6] Because the Court is convinced both that the German Army was a different entity than the Waffen SS and that Negele understood this distinction, *U.S.v. Lindert* is inapposite to the Court's analysis. In *Lindert*, the court found that defendant, who had served in the SS as a guard at two concentration camps, had not misrepresented his places of previous residence on his visa application when he responded, "1942-1945 with German Army." 907 F.Supp. 1114, 1126 (N.D. Oh. 1995). Important to the court's finding was its determination that many Germans considered the Waffen SS to be part of the German armed forces ("Wehrmacht") and that there was little evidence that defendant knew the difference

this knowledge, Negele told the clerk typing his visa application that he had served in the German Army, when he had actually served in the Waffen SS. In so doing, Negele mispresented his wartime service.

Having concluded that Negele made a mispresentation on his visa application, the Court must next determine whether that misrepresentation was material. As detailed *supra,* the legal basis of this Count is that Section 13(a) of the 1924 Act, under which Negele entered the United States, required that an immigrant have an unexpired immigration visa before entering the United States. In *Fedorenko*, the Supreme Court stated that courts have consistently held that Section 13(a) "required a valid visa and that a visa obtained through a material misrepresentation was not valid." 449 U.S. at 515. Accordingly, the Court employs *Fedorenko's* materiality standard, as clarified by the Supreme Court in *Kungys v. U.S.*, 485 U.S. 759 (1988), in evaluating the materiality of Negele's misrepresentation.

In *Fedorenko*, which considered the denaturalization of a former armed guard at a Nazi concentration camp, the Supreme Court stated:

> It is, of course, clear that the materiality of a false statement in a visa application must be measured in terms of its effect of the

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between "German Army" and "German armed forces." *Id.* at 1126-27. The evidence is quite different in this case.

> applicant's admissibility into this country. At the very least, a misrepresentation must be considered material if disclosure of the true facts would have made the applicant ineligible for a visa.

449 U.S. at 749 (citations omitted). Concluding that disclosure of the true facts about defendant's service as an armed concentration camp guard would have made him ineligible for a visa under the DPA, the Court found it unnecessary to extend its discussion of materiality in the denaturalization context. *Id.* In *Kungys*, an action to denaturalize defendant who had allegedly participated in atrocities on behalf of Nazi Germany, the Supreme Court remarked that various, differing tests for materiality were being applied by courts in denaturalization cases and noted that its attempt in *Fedorenko* to dispel this confusion had not resolved the issue. 485 U.S. at 769. The Court then clarified the materiality test as follows:

> We think it safer in the naturalization context, as elsewhere, to fix as our guide the central object of the inquiry: whether the misrepresentation or concealment was predictably capable of affecting, i.e., had a natural tendency to affect, the official decision . . . . This test must be met, of course, by evidence that is clear, unequivocal, and convincing.

Id. at 771. Accordingly, the Court must determine whether Negele's misrepresentation of his wartime service had a

natural tendency to affect the official decision to grant him a visa.

In *Stelmokas*, the Third Circuit held that defendant's mispresentation on his visa application that he was a school teacher and a laborer when in fact he was a Schutzmannschaft officer and served in the Luftwaffe was material. 100 F.3d at 317. The court reasoned:

> We have no doubt that if Stelmokas had told the truth about his service on behalf of Germany during World War II he never would have obtained his visa for permanent residency in the United States, and he never would have been naturalized. After all, we have found that these activities disqualified him from securing displaced person status and from obtaining a visa. Thus, the misrepresentations surely were material. Of course, there is a certain irony in Stelmokas's contention that his misrepresentations were not material, because when he made them he must have recognized the need to hide the truth so that he could be admitted to this country.

Id. at 317-18. Likewise, this Court finds that Negele's misrepresentation that he had served in the German Army when in fact he served in the Waffen SS as a concentration camp and Jewish ghetto guard clearly had a natural tendency to influence Vice Consul Wootten's decision to grant Negele's visa application. As the Court's conclusions of law regarding Count I, *supra,* and Count III, *infra,* demonstrate, Negele's service as an SS Death's Head Battalion guard unequivocally

made him ineligible for a visa. The Court is confident that if Negele had told the truth about his service in the Waffen SS, he would not have obtained his visa. Therefore, his mispresentation of his wartime service was material. *See U.S.v. Sokolov*, 814 F.2d 864, 873 (2nd Cir. 1987) (because defendant's wartime employment as German Army propagandist would have made him ineligible for naturalization, his "mispresentation to the investigator, that he had 'not written one single fascist or pro-fascist line,' was therefore highly material."); *U.S.v. Linnas*, 527 F.Supp. 426, 439 n.34 (E.D. N.Y. 1981) ("Defendant's misrepresentations concerning his service of the German Reich [as a concentration camp guard] were material.")

The Government would have the Court also declare that Negele made a material misrepresentation on his visa application based on Vice Consul Wootten and Buffum's testimony that it was standard procedure for a vice consul to discuss each of a visa applicant's answers on his application. Wootten also stated that he would have asked Negele several specific questions about his service during the war, based on the statement on his application that he had served in the German Army. Wootton does not remember interviewing Negele. Nevertheless, the Government insists that because Wootten must have queried Negele about his claim that he had served in the German Army, Negele must have mispresented his service to Wootten.[7] In its previous ruling

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[7] The Government argues that the presumption of regularity applicable to public official dictates that this Court presume that Wootten complied with the standards which governed his work as a vice consul and conducted an interview of Negele. However, the Court's reading of the cases the Government cites to

on the Government's motion for summary judgment on this Count, the Court took up the issue of Wootten's testimony about the questions he would have asked Negele. The Court concluded that in the absence of notes, records, or interviewing policy statements, Wootton's statements that he would have questioned Negele about his wartime service in general and his supposed stint with the German Army in particular were insufficient to meet the Government's heavy burden of proving that Wootton actually asked Negele these questions and that Negele misrepresented his activities in his answers. After carefully reviewing Wootten's and Buffum's testimony in their *de bene esse* depositions, the Court is convinced that their credible descriptions of the interviewing procedures that they claim to have consistently followed remain insufficient to prove by clear, unequivocal, and convincing evidence that Wootten asked Negele any particular questions. Negele remembered enough of his visa application process to tell the Court what he had said to the clerk typing his application; therefore, the Court relied on his testimony in determining that he had made a misrepresentation on that application. In contrast, Wootten has no recollection of meeting Negele (who also claims never to have met Wootten) and no notes or records to indicate what transpired during

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support this argument reveals that courts' presumption that officials "have properly discharged their official duties" refers to a presumption that these officials did not act improperly, that is, did not commit fraud or otherwise conceal the truth. *U.S.v. Eklund*, 733 F.2d 1287, 1294 (8th Cir. 1984); *U.S.v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). The Court does not believe that the case law supports the inference that because Wootten has described a certain procedure that he always followed, he must have followed it in Negele's case.

their meeting. Accordingly, the Court declines to rely on Wootten's testimony in determining Negele's misrepresentation.

Because Negele materially misrepresented his wartime service on his visa application, he was ineligible to receive a visa under the 1924 Act.

Count III - Acquiescence in Conduct Contrary to Civilization and Human Decency

The Government asserts that Negele, as an SS Death's Head Battalion guard at the Sachsenhausen concentration camp and the Theresienstadt Jewish ghetto, acquiesced in conduct contrary to civilization and human decency, and was therefore unlawfully admitted to the United States in violation of State Department regulations in effect at the time Negele entered the United States. Again, as noted *supra*, the parties agree that Negele's immigrant visa indicates that he entered the United States as an ethnic German quota immigrant under DPA Section 12 and the 1924 Act. The 1924 Act provided that an immigrant could not be issued a visa if the immigrant were inadmissible under any United States immigration laws. *See* Section 2(f); Section 25. Also, State Department guidelines governing the implementation of DPA Section 12 provided:

> In order to qualify for an immigration visa under the 'German ethnic origin' portions of the German and Austrian quotas the burden of proof shall be upon each applicant to establish that he is not subject to exclusion from the

> United States under any provision of the immigration laws.

Gov. Ex. 116A.

When Negele entered the United States, regulations promulgated by the State Department prohibited the issuance of a visa to any alien whose entry was deemed prejudicial to the United States.

22 C.F.R. § 53.32 provided:

> (a) No permit to enter shall be issued to any alien if the permit-issuing authority has reason to believe that the entry of the alien would be prejudicial to the interests of the United States.

22 C.F.R. § 53.33 provided in pertinent part:

> Classes of aliens whose entry is deemed to be prejudicial to the public interest.
> The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States . . .
> (j) . . . who has advocated or acquiesced in activities or conduct contrary to civilization and human decency of behalf of the Axis countries during . . . [World War II] . . . .

Only a few courts have addressed these regulations in the context of a Nazi denaturalization case. In *U.S.v. Ciurinskas*, 976 F.Supp. 1167 (N.D. In. 1997), the court

found that defendant, a Lithuanian, had served in the Schutzmannschaft in Lithuania and had participated in mass killings of Jews and others by the Schutzmannschaft. In its analysis of the Government's claim that defendant was visa ineligible on the basis of these regulations, the court concluded:

> . . . [D]efendant Ciurinskas was both aware of, and assisted in, Lithuanian Schutzmannschaft activities directed against Jews, Communists, Bolsheviks and others, many of whom were children, that were contrary to civilization and human decency. Defendant Ciurinkskas's participation in that conduct, whether active or passive, constituted acquiescence in activities and conduct contrary to civilization and human decency on behalf of the Germans.

Id. at 1188 (emphasis added). The Seventh Circuit agreed, holding that defendant's "membership in the Schutzmannschaft [was] . . . sufficient . . . , to show that he had participated in conduct contrary to civilization and human decency, pursuant to State Department Regulations, 22 C.F.R 53.33(j)." *U S. v. Ciurinskas*, 148 F.3d 729, 734 (7th Cir. 1998).

Additionally, in *U.S.v. Stelmokas*, 1995 WL 464264, at *14. (E.D Pa. 1995), the court found that defendant, a member of the Lithuanian Schutzmannschafi, had been guard commander at Vilijampole, the Kaunas, Lithunania ghetto, for a twenty-four hour period. Like the Thereisenstadt ghetto, tens of thousands of Jews were confined in brutal conditions

at Vilijampole. *Id.* at *13. The court also found that defendant's battalion had participated in the Grosse Aktion, a mass execution of thousands of Jews at Vilijampole, and that defendant was on duty at that time. *Id.* at *17. Evaluating the Government's claim that defendant had advocated or acquiesced in conduct contrary to civilization and human decency, the court determined:

> As commander of the guard of the Kaunas ghetto, defendant knew the conditions in the ghetto were contrary to civilization and human decency and that his company directly assisted in the enforcement of those conditions . . . . Defendant's failure to leave the Schutzmannschaft or to act on behalf of the Jews constituted acquiescence in conduct contrary to civilization and human decency.

Id. at *24-25.

Vice Consuls Buffum and Wootton both testified that had the truth about Negele's guard service been revealed, he would have been ineligible for a visa under these regulations. Buffum stated that an applicant who had served as a Death's head Battalion guard at a Nazi concentration camp would have been visa ineligible under State Department regulations "because their activities were so widely known as coming within the purview of the inadmissibility of those who had acquiesced in crimes against civilization and humanity." Buffum Dep. at 25-26; *see also* Wootten Dep. at 64-65 (concentration camp guards were ineligible under the regulations because "individuals who have committed crimes against humanity are not admissible, and concentration camp

guards committed crimes against humanity routinely; therefore, they are not admissible.")

Although Negele maintained in his testimony that he had committed no wrong by merely patrolling the perimeter of Theresienstadt with his German Shephard guard dog, courts have viewed guard service differently. In finding that defendant had assisted in the persecution of persons as contemplated by DPA section 13, *Breyer* reasoned:

> The undisputed facts of record establish that Nazi concentration camps were places where suffering and harm was inflicted upon tens of thousands of innocent persons and that [defendant] furthered Nazi military, political and social aims. The record is uncontroverted that he was a trained, paid, uniformed armed Nazi guard who patrolled the perimeters of two such camps with orders to shoot those who tried to escape. The prisoners he guarded and prevented from fleeing were oppressed, brutalized and killed for no other reason than their race, national origin or religion.

41 F.3d at 890. Likewise, *U.S.v. Hutyczyk*, considering a count of persecution against defendant who had been a guard at Koldyczewo (in what was then Poland), a forced labor camp where Jews were confined, reasoned:

> At Koldyczewo during the summer and fall of 1942, [defendant] was an armed representative of an occupying force that had imprisoned Jews simply because they were Jews and had

> persecuted them. Without individuals guarding the perimeter of the camp at night, ensuring that no Jew escaped, the cruel treatment would not have been able to continue . . . . the effect of the presence of armed guards surely must have persuaded prisoners not to attempt to leave their barracks, thereby keeping the Jews imprisoned because of their religion.

803 F.Supp. 1001, 1010 (D. N.J. 1992). While these analyses involved a count of Section 13 persecution rather than the State Department regulations at issue here, their reasoning remains compelling.

Even if this Court considers only Negele's admitted activities, the Court finds that he acquiesced in conduct contrary to civilization and human decency. The Court notes that acquiescence is defined as "passive assent or agreement without protest." AMERICAN HERITAGE COLLEGE DICTIONARY 12 (1993). Negele admits that he patrolled the perimeter of Theresienstadt with his trained dog[8] eight hours a day, five days a week. He further admits that he knew that Jews and other prisoners were confined at the ghetto and could not leave. He recognized then and admits now that his function as a guard was to prevent these prisoners from

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[8] Negele insists that he was unarmed and accompanied only by his dog when performing his guard duty. This testimony fills so far outside the parameters of the credible evidence in the case as to be summarily rejected. In any event, the Court believes that a well-fed German Shephard trained to stop fleeing prisoners was just as effective a deterrent to escape as a gun. Therefore, Negele's contentions do not alter the Court's analysis.

escaping from the ghetto. Even if Negele was unaware of the grotesquely inhumane conditions under which these prisoners were forced to live, an assertion the Court finds incredible, Negele's knowledge that he was assisting the Germans in keeping thousands of civilians imprisoned at Theresienstadt is sufficient to convince the Court that he acquiesced in conduct contrary to civilization and human decency. Like Stelmokas, Negele failed to leave the service of the Death's Head guard or to act to aid the prisoners he guarded in any way. Instead, he performed guard duty as he had been trained to do, wearing the uniform, taking his pay and his leave, passively assenting to the confinement and persecution of thousands of civilians. Moreover, the Court concludes that Negele also served as a guard, not merely a trainee, at Sachsenhausen. He acquiesced in conduct contrary to civilization and human decency.

Negele challenges the regulations as impermissably vague, asserting that the penalty of deportation raises this civil action to a "quasi-criminal" level, and arguing that the language "prejudicial to the public interest" and "advocated or acquiesced in activities or conduct contrary to civilization or human decency on behalf of the Axis countries" is so vague as to be open to arbitrary and discriminatory interpretation and application. Negele bears a "heavy burden" to prove that these regulations are invalid. *U.S.v. Ekberg*, 291 F.2d 913, 921 (8th Cir. 1961).

"The void-for-vagueness doctrine is embodied in the due process clauses of the fifth and fourteenth amendments." *Woodies v. Westark Community College*, 160 F.3d 435, 438 (8th Cir. 1998). A regulation is unconstitutionally vague if it fails to (1) define the offense with sufficient definiteness that

ordinary people can understand prohibited conduct; and (2) establish standards to permit police to enforce the law in a non-arbitrary, non-discriminatory manner. *Id.* (citing *Kolender v. Lawson*, 461 U.S. 352, (1983)). "Vagueness challenges that do not involve the First Amendment must be examined in light of the specific facts of the case at hand and not with regard to the statute's facial validity." *Id.* at 438-39 (citing *Chapman v. U.S.*, 500 U.S. 453, 467 (1991)). The Court finds that the challenged regulations do not involve the First Amendment.

Turning to the specific facts of this case, the Court must determine whether the regulations were sufficiently precise to notify Negele that his service as an SS Death's Head Battalion guard at Sachesenhausen and Theresienstadt could cause his entry to the United States to be deemed prejudicial to its interests. Negele's own actions indicate that the regulations were so precise. As discussed *supra,* when applying for his visa, Negele misrepresented his guard service, telling the officials only that he had served in the German Army The most logical explanation for Negele's misrepresentation is his knowledge that telling the truth about his service as a concentration camp and ghetto guard would result in a denial of his visa application. Furthermore, "[a] [person] who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to . . . others. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982).

The Court has already found that Negele's service as a guard constituted acquiescence in activities or conduct contrary to civilization or human decency on behalf of Germany and therefore concludes that he engaged in conduct

that clearly made him ineligible for a visa under the regulations. Finding that the regulations do not violate the due process clause as applied to Negele's situation, the Court rejects Negele's void for vagueness argument.

Finally, Negele asserts that the regulations violate the equal protection clause because there is no rational basis for their enforcement. Negele contends that because a 1954 regulation would have allowed his entry into the United States, it would be illogical for the Court to hold that he must be denaturalized simply because he entered the United States in 1950. Negele submits a 1954 Department of State Instruction which includes a hypothetical analysis of the visa application of a Nazi party and SS member, stating that if there were no evidence that this alien had advocated or acquiesced in conduct contrary to civilization and human decency, "it does not appear that a visa would properly be refused under the provisions of Section 212(a)(27) of the [1924 Act]." Def. Ex. ZZ at 2. Like Negele's evidence that he would not have been found a member of a movement hostile, this evidence is fatally flawed by the fact that the instruction refers to members of the Nazi party -- not former Death's Head Battalion guards -- in counseling that mere membership in these organizations was not an adequate basis for refusing a visa. *Id.* at 1. Negele does not offer any explanation as to why the Court should construe this instruction as applying to Death's Head Battalion guards, and the Court declines to do. Negele's equal protection argument on the basis of later regulations fails.

The Court accordingly finds that the Government has proven by clear, unequivocal, and convincing evidence that Negele advocated or acquiesced in activities or conduct

contrary to civilization and human decency on behalf of Germany. As an inadmissible alien under State Department regulations, Negele was ineligible to receive a visa pursuant to both DPA Section 12 and the 1924 Act.

After careful evaluation of each of the Counts alleged in the Government's complaint, the Court has concluded that Negele's visa was invalid on three separate grounds. Because Negele did not have a valid visa when he entered the United States, he was not lawfully admitted to the United States. *Fedorenko*, 499 U.S. at 506, 508, 515. Because Negele was not "lawfully admitted for permanent residence" to the United States, his citizenship was illegally procured. 8 U.S.C. § 1427(a)(1). His illegally procured citizenship must and shall be revoked. 8 U.S.C. § 1451(a).

Accordingly,

IT IS HEREBY ORDERED that the naturalization order of this Court entered September 9, 1955, granting United States citizenship to Michael Negele is **REVOKED AND SET ASIDE**, and that Certificate of Naturalization No. 7554690 is **CANCELED**.

IT IS FURTHER ORDERED that Michael Negele shall, upon receipt of this Order, **SURRENDER** Certificate of Naturalization No. 7554690 to the Attorney General.

IT IS FURTHER ORDERED that the Clerk of the Court shall send a certified copy of this Order and Judgment to the Attorney General. 8 U.S.C S 1451(f).

Dated this 20th day of July, 1999.

/s/_____
E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

[Filed July 20, 1999]

Case No. 4:97CV1810 ERW

UNITED STATES OF AMERICA)
Plaintiff,)
)
v.)
)
MICHAEL NEGELE,)
Defendant.)

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the naturalization order of this Court entered September 9, 1955, granting United States citizenship to Michael Negele is **REVOKED AND SET ASIDE**, and that Certificate of Naturalization No. 7554690 is **CANCELED**.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Michael Negele shall, upon receipt of this Order, **SURRENDER** Certificate of Naturalization No. 7554690 to the Attorney General.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Clerk of the Court shall send a certified copy of this Order and Judgment to the Attorney General 8 U.S.C. S 1451(f).

Dated this 20th day of July, 1999.

/s/_____
E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

[Filed February 26, 1999]

No. 4:97CV1810 ERW

UNITED STATES, *Plaintiff*,
v.
MICHAEL NEGELE, *Defendant*.

MEMORANDUM AND ORDER

This matter is before the Court on Defendant Michael Negele's Motion to Dismiss for Lack of Jurisdiction and for Failure to State a Cause of Action upon which Relief can be Granted [document #34].

In its Second Amended Complaint, the Government alleges in three counts three violations of the nation's immigration and naturalization laws, each of which calls for the revocation of Negele's citizenship. In the first two counts, the Government alleges that because Negele was illegible to

receive a visa, his entry into the United States pursuant to that visa was unlawful; that accordingly his subsequent naturalization was unlawful under Section 316(a) of the Immigration and Nationality Act of 1952 ("INA"), 8 U.S.C. § 1427(a); and that consequently his citizenship was illegally procured and must be revoked, as provided for in Section 340(a) of the INA, 8 U.S.C. § 1451(a) . In Count I, the Government alleges that Negele entered the United States under the provisions of the Displaced Persons Act of 1948, Pub. L. No. 80774, ch. 647, 62 Stat. 1009 ("DPA"). The Government further alleges that Negele's service as an SS Death's Head Battalion guard at the Sachsenhausen Concentration Camp and the Theresienstadt ghetto constituted membership or participation in a movement hostile to the United States and to the form of government of the United States, making him illegible to receive a visa under Section 13 of the DPA. In Count II, the Government alleges that Negele's willful misrepresentation and concealment of material facts--his SS Death's Head Battalion guard service--for the purpose of gaining admission into the United States made him illegible to receive a visa under Section 13(a) of the Immigration Act of 1924, P.L. No. 68-139, ch. 190 ("1924 Act").

In Count III, the Government alleges that Negele's service as an SS Death's Head Battalion guard constituted advocacy and acquiescence in activities or conduct contrary to civilization and human decency, and made his admission to the country prejudicial to the interests of the United States, as prohibited by Department of State Regulations, 22 C.F.R. §§ 53.32, 53.33 (1949), making him illegible to receive a visa under the 1924 Act, and thus an unlawfully naturalized citizen

whose citizenship must be revoked pursuant to Section 340(a) of the INA, 8 U.S.C. § 1451(a) .

I. Legal Standard

A complaint shall not be dismissed unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of a claim entitling him or her to relief. *Breedlove v. Earthgrains Baking*, 140 F.3d 797, 799 (8th Cir. 1998) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). The court must "construe the complaint liberally and assume all factual allegations to be true." *Goss v. City of Little Rock*, 90 F.3d 306, 308 (8th Cir. 1996). In its liberal construction of the complaint, the court must view the facts alleged in the light most favorable to the plaintiff. *Schuer v. Rhodes*, 416 U.S. 232, 236 (1976). The issue is not whether the plaintiff ultimately will prevail, but whether the plaintiff is entitled to present evidence in support of his or her claim. *Id.*

II. Analysis

8 U.S.C. § 1451(a), the statute under which the Government seeks denaturalization of Negele, provides:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on

> the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation . . . .

Negele first challenges this Court's jurisdiction, asserting that the Court does not have jurisdiction to review *de novo* Negele's visa eligibility. The Court's jurisdiction to do exactly that is amply supported by the explicit language of § 1451(a) as well as a host of cases in which courts have examined the visa eligibility of former Nazi guards and Nazi supporters who did not reveal their wartime service to American officials when they sought to enter this country. *See e.g.*, *United States v. Koreh*, 59 F.3d 431 (3rd Cir. 1995); *United States v. Schmidt*, 923 F.2d 1253 (7th Cir. 1991); *United States v. Sokolov*, 814 F.2d 864 (2nd Cir. 1987). Moreover, in *Fedorenko*[1] *v. United States*, 449 U.S. 490 (1981), the Supreme Court did not question the district court's jurisdiction to review a former Nazi guard's visa eligibility pursuant to a § 1451(a) denaturalization action. Instead, the Court stated that, "our cases have also recognized that there must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship. Failure to comply with any of these conditions

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[1] Throughout his arguments in favor of his motion to dismiss, Negele repeatedly urges the Court to disregard the Supreme Court's decision in *Fedorenko*. However, *Fedorenko* remains good law; indeed, the Supreme Court has declined to review any of the many subsequent federal circuit court and district court denaturalization decisions relying on *Fedorenko*. If Negele intends to suggest that this Court abandon stare decisis, the Court rejects his suggestion.

renders the certificate of citizenship 'illegally procured,' and naturalization that is unlawfully procured can be set aside." *Id.*, at 506. The Eleventh Circuit puts it simply: "Lawful admittance to the United States is a statutory condition precedent to naturalization. 8 U.S.C. § 1429. If [a defendant] were ineligible for a visa, he would be unlawfully admitted to the United States." *United States v. Koziy*, 728 F.2d 1314, 1317 (11th Cir.), *cert. denied*, 469 U.S. 835 (1984).

Negele sets forth no convincing support for his novel theory that pursuant to § 1451(a), Congress intended for courts to extend their scrutiny only as far as the legitimacy of the certificate of naturalization; to the contrary, the language of § 1451(a) declares that courts are to determine whether that certificate of naturalization was illegally procured or procured by concealment or misrepresentation, requiring that courts examine how a naturalized citizen came to possess his certificate. Such an examination often will lead a court to scrutinize the immigrant's visa eligibility, as the Government asks this Court to do. While Negele protests that the Court cannot investigate his visa eligibility, his arguments do nothing to undermine the Supreme Court precedent in *Fedorenko*, in which the Court acknowledged and approved lower courts' examinations of defendant's visa eligibility. 449 U.S. at 493, 508.

Equally unavailing is Negele's contention that the Court's denaturalization of him pursuant to a finding of visa ineligibility would be unconstitutional. First, the fundamental principle of stare decisis requires that the Court follow the holding of *Fedorenko*, in which the Supreme Court defined lawful admission to the United States, the 8 U.S.C. § 1427(a) prerequisite to naturalization, as requiring that an individual

possess a valid unexpired visa. 490 U.S. at 751. The Supreme Court also explained how such a determination fits into the separation of powers doctrine of the United States Constitution:

> This judicial insistence on strict compliance with the statutory conditions precedent to naturalization is simply an acknowledgment of the fact that Congress alone has the constitutional authority to prescribe rules for naturalization, and the courts' task is to assure compliance with the particular prerequisites to the acquisition of United States citizenship by naturalization

Id. at 747. Thus, *Fedorenko* clearly approved judicial investigation into an alien's compliance with "all statutory requirements" of naturalization. *Id.*

Second, the cases and other authority Negele cites to support his unconstitutionality argument do not hold that district courts have no jurisdiction to review visa eligibility, but instead hold that courts are without authority to review visa denials by United States consular officers. *See Doan v. INS,* 160 F.3d 508, 509 (8th Cir. 1998) ("Administrative decisions *excluding* aliens are not subject to judicial review unless there is a clear grant of authority by statute.") (emphasis added); *Landon v. Plansenia,* 459 U.S. 21, 32, 34 (1982) (". . . the power to *exclude* aliens is a sovereign prerogative," with a limited role for the judiciary) (emphasis added); Letter from Thomas W. Hussey, Deputy Director of Office of Immigration Litigation, Dec. 15, 1998 (" . . . we do assert that the courts are without authority to review visa

denials by United States consular officers.") (emphasis added). The Court therefore remains unconvinced by Negele's argument that a *Fedorenko* visa eligibility determination is unconstitutional. For these reasons, the Court rejects Negele's contentions that it lacks jurisdiction over this action.[2]

Negele also argues that when he was naturalized in 1955, 8 U.S.C. § 1451(a) did not include illegal procurement as grounds for denaturalization and that the subsequent addition of illegal procurement grounds cannot be applied retroactively to him. In *Johannesson v. United States*, the Supreme Court rebuffed this argument, finding that the utilization of illegal procurement as a basis for denaturalizing Johannessen did not violate the ex post facto clause. The Court stated, "The act imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct. It simply deprives him of his ill-gotten privileges." 225 U.S. 227, 242-43 (1912). Furthermore, in its thorough analysis of this argument, the Seventh Circuit found that sufficient evidence of congressional intent existed to apply the illegal procurement

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[2] For similar reasons, the Court declines Negele's proposition that the Affidavit of Good Cause by Charles L. Gittens, filed in support of the Amended Complaint as required by 8 U.S.C. § 1451(a), is deficient. Negele asserts that the affidavit relies entirely on visa disqualification rather than stating a claim that Negele violated naturalization laws. Because the Court has determined that examining the validity of Negele's visa is wholly appropriate in a case such as this one, the Court finds Negele's assertions unpersuasive.

grounds re-added[3] by a 1961 amendment to § 1451(a) to pre-1961 naturalizations. *United States v. Kairys*, 782 F.2d 1374, 1381 (7th Cir.), *cert. denied*, 476 U.S. 1153 (1986). The court reasoned that 8 U.S.C. § 1451(g), which states that the provisions of § 1451 are to be applied "not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this subchapter, but to any naturalization heretofore granted by any court," strongly indicates that Congress intended to apply the amendment to pre-1961 grants of citizenship. *Id.* at 1381. Additionally, the court remarked upon the considerable illogic of concluding that Congress intended to create a loophole in the statute, applying the illegal procurement standard to pre-1952 Act and post-1961 Act naturalizations but not to those falling in the gap, such as Negele's 1955 naturalization. *Id.* at 1382. Finding the reasoning of *Kairys* persuasive, the Court adopts it and finds that the illegal procurement standard may be applied to Negele's 1955 naturalization.

This Court also rejects Negele's assertion that § 1451(a)'s illegal procurement grounds do not apply to visa procurement because of the Supreme Court's reasoning in *Kungys v. United States*, 485 U.S. 759 (1988). *Kungys* considered denaturalization on concealment or misrepresentation grounds, not on illegal procurement grounds, and specifically noted that a court could find that a visa procured by misrepresentation was illegally procured

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[3] The court points out that while the illegal procurement standard had been incorporated into preceding denaturalization statutes, it was "inexplicably and apparently inadvertently dropped from the 1952 Act." *Kairys*, 782 F.2d at 1382, n.12

pursuant to § 1451(a). 485 U.S. at 774 n.8 (citing *Fedorenko*, 449 U.S. at 509).

Negele further contends that the Commissioner of Immigration's determination that he was "lawfully admitted" for naturalization purposes is a conclusive determination of lawful admission which this Court cannot reconsider. To the contrary, the applicable immigration statutes and case law interpreting these statutes in denaturalization cases demonstrate that the Court should look behind Negele's naturalization to his visa eligibility.

Section 316(a) of the INA, 8 U.S.C. § 1427(a) provides that:

> No person, except as otherwise provided in this title, shall be naturalized unless such applicant . . . has resided continuously, after being lawfully admitted for permanent residence, within the United States . . . .

Section 101(a) (20) of the INA, 8 U.S.C. § 1101(a) (20) defines the term "lawfully admitted for permanent residence" as meaning "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws . . . . "

Negele urges the Court to confine its evaluation to the validity of his naturalization, while turning a blind eye to the alleged concealment of Nazi guard service which allowed him to obtain the visa making possible that naturalization. However, the Supreme Court did not so limit its examination in *Fedorenko* to the contrary, the Court declared that the INA

of 1952, 8 U.S.C. §§ 1427(a) and 1429, "required an applicant for citizenship to be lawfully admitted to the United States for permanent residence. Lawful admission for permanent residence in turn required that the individual possess a *valid* unexpired immigrant visa" upon entry into the United States. 449 U.S. at 514-15 (emphasis added). The federal courts have similarly concluded that defendants who were ineligible for visas were never lawfully admitted into the United States, making their subsequent naturalization illegally procured under § 1451(a). *See United States v. Breyer*, 41 F.3d 884, 889, 8992 (3d Cir. 1994); *Kairys*, 782 F.2d at 1377, 1384; *Koziy*, 728 F.2d at 1318-19.

Thus, the Supreme Court and Courts of Appeals hold that lawful admission to the United States, which Negele admits was necessary for his naturalization, is contingent upon possession of a "valid unexpired immigrant visa" at the time of entry.[4] The Court's, determination of whether Negele was ineligible for the visa he received, as the Government maintains, is therefore essential.

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[4] The Court finds Negele's arguments concerning *In the Matter of Pablo Ayala-Arevalo*, Case No. A42989249 (Brd. Imm. App. Nov. 30, 1998) inapposite. In this deportation case, the considered the meaning of the language "any alien who has previously been admitted to the United States as a alien lawfully admitted for permanent residence" in Section 212(h) of the INA, 8 U.S.C. § 1182(h), which refers to the previously determined status under which an alien entered the United States. In contrast, § 1427(a) does not refer to the immigration authorities' previous determination of an alien's status but distinguishes only between lawful and unlawful admission, which the Supreme Court has interpreted as a question of visa eligibility. *Fedorenko*, 490 at 751.

The Supreme Court's requirement that an immigrant possess a valid visa at the time of his entry to the United States also makes unavailing Negele's assertion that the validity of his visa should be determined by looking to the 1952 INA, rather than the 1924 Act or the DPA. Negele was issued his immigrant visa for permanent residence on February 23, 1950; therefore, the 1952 INA does not apply. Instead, the 1924 Act and the applicable sections of the DPA[5] are the appropriate laws under which to determine Negele's visa eligibility. Both the 1924 Act and the DPA were in effect at the time Negele received his visa, *Fedorenko*, 449 U.S. at 751; therefore, Negele's additional argument that these laws' expiration in 1952 makes them inapplicable to him is also without merit.

Additionally, Negele asserts that the 1955 court order granting Negele naturalized citizenship cannot be re-adjudicated under the doctrine of *res judicata*. However, the

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[5] Negele challenges Count I, which the Government brings pursuant to the DPA Section 13's prohibition of visa issuance to any person who has participated in a movement hostile to the United States, asserting that the DPA Section 13 did not apply to Negele, whose visa was issued pursuant to the 1924 Act. However, the Court has previously found that Negele received his visa as a quota immigrant under the DPA Section 12 as well as the 1924 Act. Memorandum and Order, at 2 (Feb.. 23, 1999). Furthermore, the Government has submitted convincing evidence demonstrating that Section 12 quota immigrants were subject to "hostile movement" disqualification under Section 13 of the DPA. Gov. Supp. Brf. Ex. 5, 6, 8. Other than his conclusory allegations to the contrary, Negele has submitted no evidence to refute the Government.

Court finds that § 1451(a) expressly charges district courts with the responsibility of revoking orders of citizenship that were procured illegally, by concealment, or by misrepresentation. Furthermore, the Supreme Court stated in *Johannessen*, 225 U.S. at 238 that a certificate of citizenship is "an instrument granting political privileges, and open like other public grants to be revoked if and when it shall be found to have been unlawfully or fraudulently procured." Because Negele offers no authority to contravene the clear instructions of both the United States Congress and the Supreme Court, the Court dismisses Negele's *res judicata* argument without further discussion.

Finally, Negele argues that Count III is flawed in that this Court has no jurisdiction permitting it to apply State Department visa regulations as a basis for illegal procurement denaturalization. In response, the Government asserts that Count III alleges that Negele failed to meet the 8 U.S.C. § 1427(a) statutory requirement that he be lawfully admitted to the United States. In other words, under the applicable State Department regulations regarding acquiescence in activities or conduct contrary to civilization and human decency, Negele allegedly was ineligible for a visa to enter the United States. This alleged ineligibility made Negele's subsequent entry into the United States unlawful. The Court agrees with the Government that it has alleged facts sufficient to state a claim for violation of law--not simply a regulatory violation.

Accordingly,

IT IS HEREBY ORDERED that Defendant Michael Negele's Motion to Dismiss for Lack of Jurisdiction and for

Failure to State a Cause of Action upon which Relief can be Granted [document #34] is DENIED.

Dated this 26th day of February, 1999.

/s/_____
E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Filed October 24, 2000]

No. 99-3522EMSL

United States of America, Appellee,

v.

Michael Negele, Appellant.

Order Denying Petition for Rehearing and for Rehearing En Banc

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

October 24, 2000

Order Entered at the Direction of the Court:

/s/_____
Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

[Filed January 19, 1999]

No. 4:97-CV-1810 ERW

UNITED STATES OF AMERICA)
Plaintiff,)
)
v.)
)
MICHAEL NEGELE,)
Defendant.)

SECOND AMENDED COMPLAINT

Plaintiff, the UNITED STATES OF AMERICA, by and through its attorneys, for its complaint herein alleges as follows:

I. JURISDICTION AND VENUE

1. This is an action pursuant to Section 340(a) of the Immigration and Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1451(a), to revoke the citizenship of Defendant, to set aside the Order of the United States District

Court for the Eastern District of Missouri, dated September 9, 1955, admitting Defendant to citizenship, and to cancel Certificate of Naturalization No. 7554690, issued to Defendant pursuant to that Order.

2. Plaintiff is the United States of America.

3. Defendant, Michael Negele, is a natural person whose last known address is 1402 Sandra Elaine, St. Peters, Missouri, which is within the jurisdiction and venue of this Court.

4. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1345 (except as otherwise provided by Act of Congress, the District Courts shall have original jurisdiction of all civil actions commenced by the United States) and by Section 340(a) of the INA, 8 U.S.C. § 1451(a) (an action to revoke citizenship is to be brought in a District Court).

5. Venue is proper in this District under Section 340(a) of the INA, 8 U.S.C. § 1451(a) (an action to revoke citizenship shall be brought in the judicial district in which the naturalized citizen resides at the time the suit is brought).

6. As required by Section 340(a) of the INA, 8 U.S.C. § 1451(a), an Affidavit of Charles L. Gittens, Deputy Director (Operations), Office of Special Investigations, Criminal Division, United States Department of Justice, showing good cause for this action, is attached as Exhibit A.

II. FACTS

A. Defendant's Activities Prior to and During World War II

7. Defendant was born on May 5, 1920, in Gross St. Nikolaus (also known as Sinnicolau Mare), Romania.

8. On February 20, 1942, Defendant entered the Romanian Army, where he served until on or about October 17, 1943.

9. On November 1, 1943, Defendant entered the Nazi Waffen-SS (Armed SS), receiving the rank of SS-Schütze (private).

10. In 1946, the International Military Tribunal at Nuremberg, Germany, held that the SS, including the Waffen-SS, constituted a criminal organization involved in "the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labor program and the mistreatment and murder of prisoners of war." *The Nuremberg Trial*, 6 F.R.D. 69, 143 (I.M.T. 1946).

11. Upon joining the Waffen-SS on November 1, 1943, Defendant became a member of the SS Death's Head Guard Battalion (*SS-Totenkopf-Wachbataillon*), previously known as the SS Death's Head Battalion (*SS-Totenkopf-Sturmbann*), at the Sachsenhausen Concentration Camp (also known as "Oranienburg Concentration Camp") near Berlin,

Germany, where he served as an armed guard of prisoners until June 5, 1944.

12. On June 5, 1944, Defendant was ordered transferred to the Death's Head Battalion at Plaszow Concentration Camp in German-occupied Cracow, Poland.

13. The SS Death's Head Battalions guarded the Nazi concentration camps, including Sachsenhausen Concentration Camp. While guarding concentration camps, members of the SS Death's Head Battalions, including Defendant, assisted the Nazi government of Germany in persecuting civil populations. This persecution included, but was not necessarily limited to, forcible confinement, subjection to slave labor, deprivation of adequate food, shelter, and medical care, physical and emotional abuse, torture, and killing.

14. At Sachsenhausen Concentration Camp, the duties of a camp guard included guarding the perimeter of the camps, guarding labor details outside the camps, and escorting prisoners to and from slave labor worksites. Armed SS Death's Head Battalion guards were stationed in guard towers and as sentries around the perimeter of the camp and had orders to shoot to kill any prisoner attempting to escape. All guards were trained in and responsible for these duties.

15. Persons confined at Sachsenhausen Concentration Camp were imprisoned and murdered because of their religion, national origin, race, or political opinion. Sachsenhausen prisoners included persons of various European national groups, religious denominations, and political opinions, including Jews, Roma and Sinti (commonly

referred to as Gypsies), and political prisoners. On December 31, 1943, about two months after Defendant arrived at Sachsenhausen, the camp held 28,224 prisoners.

16. The Sachsenhausen Concentration Camp contained work facilities, where prisoners were forced to perform various types of labor. The complex also housed a crematorium, a gas chamber, a shooting pit used for executions by firing squad, and a gallows.

17. Starvation and disease were rampant among the prisoner population at Sachsenhausen as a result of inadequate food and unsanitary conditions. Thousands of prisoners died, while others, deemed too ill or too weak to work, were killed or transferred to other camps to be killed. Many Sachsenhausen prisoners were murdered by shooting, hanging, gassing, beatings, and other means. The camp was also the site of a variety of gruesome medical experiments that killed many prisoners. Some of these experiments were carried out while Defendant was serving as a member of the SS Death's Head Guard Battalion Sachsenhausen. In all, tens of thousands of men, women and children died in the Sachsenhausen system while it was in operation.

18. At some point after his transfer from Sachsenhausen, Defendant was assigned as an SS Death's Head Battalion guard to the Jewish ghetto in the town of Theresienstadt, also known as Terezin, in what was then Czechoslovakia. Defendant guarded the perimeter of the facility while armed with a trained guard dog.

19. The ghetto at Theresienstadt was established by the Nazis as an internment camp for Jews, political prisoners,

and others. Persons were imprisoned under inhumane conditions at Theresienstadt because of their religion, national origin, race, or political opinion. Many prisoners died in the ghetto as a result of disease and starvation. The Theresienstadt ghetto also served as a collection center for deportations to concentration camps, including the extermination facilities at Auschwitz and Treblinka.

20. Defendant served as an SS Death's Head Battalion guard at Theresienstadt until May 8, 1945, when he was captured and became e prisoner of war of the Soviet Army.

B. Defendant's Immigration to the United States

21. On February 23, 1950, Defendant filed an Application for Immigrant Visa and Alien Registration with the U.S. Consulate in Stuttgart, Germany, in order to obtain an immigrant visa to the United States. Defendant's application lists his places of residence from 1942 to 1945 as "German and Rumanian Army." Defendant did not reveal his service in the Waffen-SS, his residence at the Sachsenhausen Concentration Camp (or any other concentration camp), as described above in paragraph 11, his service at Theresienstadt, as described above in paragraph 18, or that he was held as a prisoner of war. Defendant orally swore to the truth of the information on his visa application.

22. Based upon Defendant's concealments and misrepresentations to United States authorities as described above, on February 23, 1950, Defendant was issued an immigrant visa pursuant to the Displaced Persons Act of 1948

(DPA), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, and the Immigration Act of 1924, Pub. L. No. 60-139, ch. 190, 43 Stat. 153.

23. On March 22, 1950, Defendant entered the United States at the Port of New York.

C. Defendant's Naturalization as a United States Citizen

24. On or about April 25, 1955, Defendant filed with the United States Immigration and Naturalization Service (INS) an Application to File Petition for Naturalization and Statement of Facts for Preparation of Petition, which together constituted INS Form N-400.

25. On September 9, 1955, the United States District Court for the Eastern District of Missouri granted Defendant's Petition for Naturalization and issued to him Certificate of Naturalization No. 7554690.

III. LAW

26. Under Section 340(a) of the INA, 8 U.S.C. § 1451(a), Defendant's citizenship must be revoked and his Certificate of Naturalization must be cancelled if his citizenship was illegally procured or procured by concealment of a material fact or by willful misrepresentation.

COUNT I

Illegal Procurement of U.S. Citizenship: Unlawful Admission Under the DPA

(Membership in a Hostile Movement}

27. Plaintiff realleges and incorporates by reference paragraphs 1 through 25 of this Complaint.

28. As set forth in paragraph 22, Defendant entered the United States under the provisions of the DPA (P.L. 80-774). Section 13 of the DPA prohibited issuance of a visa to any person who is or has been a member of, or participated in, any movement which is or has been hostile to the United States or the form of government of the United States.

29. Defendant's service as an SS Death's Head Battalicn guard" at the Sachsenhausen Concentration Camp, as alleged in paragraphs 9 through 17, and his service as an SS Death's Head Battalion guard at Theresienstadt, as alleged in paragraphs 18 through 20, constituted membership or participation in a movement hostile to the United States and to the form of government of the United States. Defendant therefore was not eligible to receive a visa under the D?A.

30. Because Defendant was not eligible to receive a visa under the DPA, his entry into the United States pursuant thereto was unlawful.

31. Because Defendant's entry into the United States was unlawful, his subsequent naturalization was unlawful under Section 316(a) (1) of the INA, 8 U.S.C. § 1427(a) (1).

32. Defendant's citizenship thus was illegally procured and must be revoked, as provided for in Section 340(a) of the INA, 8 U.S.C. § 1451(a).

COUNT II

Illegal Procurement of U.S. Citizenship:
Unlawful Admission Under the Displaced Persons Act
(Material Misrepresentation)

33. Plaintiff realleges and incorporates by reference paragraphs 1 through 25 of this Complaint.

34. Defendant willfully misrepresented material facts for the purpose of gaining admission into the United States when he misrepresented and concealed his. wartime activities, as alleged in paragraph 21. Defendant was, therefore, ineligible to receive a visa under Section 13(a) of the Immigration Act of 1924.

35. Because Defendant was not eligible to receive a visa under the Immigration Act of 1924, his entry into the United States pursuant thereto was unlawful.

36. Because Defendant's entry into the United States was unlawful, his subsequent naturalization was unlawful under Section 316(a) (1) of the INA, 8 U.S.C. § 1427(a) (1).

37. Defendant's citizenship thus was illegally procured and must be revoked, as provided for in Section 340(a) of the INA, 8 U.S.C. § 1451(a).

COUNT III

Illegal Procurement of U.S. Citizenship:
Unlawful Admission Under State Department Regulations
(Acquiescence in Conduct Contrary
to Civilization and Human Decency)

38. Plaintiff realleges and incorporates by reference paragraphs 1 through 25 of this Complaint.

39. At the time that Defendant successfully applied to enter the United States and at the time of his entry into the United States, regulations promulgated by the Department of State pursuant to authority delegated by Presidential proclamation forbade the issuance of a visa to any alien whose entry .would be prejudicial to the United States. The regulations identified those aliens whose entry would be prejudicial to the United States:

> § 53.32 Refusal of permission to enter.
> (a) No permit to enter shall be issued to any alien if the permit-issuing authority has reason to believe that the entry of the alien would be prejudicial to the interests of the United States.
>
> § 53.33 Classes of aliens whose entry is deemed to be prejudicial to the public interest.
> The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States
>
> (j) ... who has advocated or acquiesced in activities or conduct contrary to civilization

> and human decency on behalf of the Axis countries during [World War II] [or]
>
> (k) ... who is not within one or more of the classes defined in paragraphs (a) to (j) of this section, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States

22 C.F.R. § 53.32, 53.33 (1949).

40. Defendant's service as an SS Death's Head Battalion guard at the Sachsenhausen Concentration Camp, as alleged in paragraphs 9 through 17, and his service as an SS Death's Head Battalion guard at Theresienstadt, as alleged in paragraphs 18 through 20, constituted advocacy and acquiescence in activities or conduct contrary to civilization and human decency, and rendered his admission prejudicial to the interests of the United States, as prohibited by Department of State Regulations. Defendant was therefore ineligible to receive a visa.

41. The Immigration Act of 1924 prohibits issuance of an immigration visa to an immigrant if the immigrant was inadmissible to the United States under the immigration laws and regulations.

42. Because Defendant was not eligible to receive a visa under the State Department regulations and the Immigration Act of 1924, his entry into the United States was unlawful.

43. Because Defendant's entry into the United States was unlawful, his subsequent naturalization was unlawful pursuant to Section 316(a) (1) of the INA, 8 U.S.C. § 1427(a) (1).

44. Defendant's citizenship thus was illegally procured and must be revoked pursuant to Section 340(a) of the INA, 8 U.S.C. § 1451(a).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests:

1. A declaration that Defendant procured his citizenship and Certificate of Naturalization illegally and by willful concealment and misrepresentation of material facts.

2. A judgment that revokes the United States citizenship of Defendant, that sets aside the Order of the United States District Court for the Eastern District of Missouri, dated September 9, 1955, admitting Defendant to United States citizenship, and that cancels Defendant's Certificate of Naturalization No. 7554690, issued pursuant to that Order.

3. A judgment forever restraining and enjoining the Defendant from claiming any rights, privileges, benefits, or advantages under any document evidencing United States citizenship.

4. A judgment requiring Defendant to surrender immediately and deliver to the Attorney General his

Certificate of Naturalization No. 7554690, his United States passport, should he have one, and any other indicia of United States citizenship.

5. Such other relief as may be lawful and proper.

EDWARD L. DOWD, Jr.
United States Attorney

SUSAN L. SIEGAL
Principal Deputy Director

/s/_____
EDWIN B. BRZEZINSKI
Assistant U.S. Attorney
Office of the United States Attorney
Eastern District of Missouri
U.S. Court and Custom House
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

No. 4:97-CV-1810 ERW

UNITED STATES OF AMERICA)
Plaintiff,)
)
v.)
)
MICHAEL NEGELE,)
Defendant.)
)

AFFIDAVIT OF GOOD CAUSE IN SUPPORT OF SECOND AMENDED COMPLAINT

I, Charles L. Gittens, declare under penalty of perjury as follows:

I am the Deputy Director (Operations), in the Office of Special Investigations, Criminal Division, United States Department of Justice, and, as such, have access to records and information of the United States Immigration and Naturalization Service (INS) as well as other agencies and organizations, from which the following facts appear concerning the wartime activities, immigration and naturalization of Michael Negele (Defendant).

1. Defendant was born on May 5, 1920, in Gross St. Nikolaus (also known as Sinnicolau Mare), Romania.

2. On February 20, 1942, Defendant entered the Romanian Army, where he served until on or about October 17, 1943.

3. Captured German documents show that on November 1, 1943, Defendant entered the Waffen-SS, receiving the rank of SS-Schutze (private).

4. In 1946, the International Military Tribunal at. Nuremberg, Germany, held that the SS, including the Waffen-SS, constituted a criminal organization involved in "the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labor program and the mistreatment and murder of prisoners of war." The Nuremberg Trial, 6 F.R.D. 69, 143 (I.M.T. 1946).

5. Captured German documents show that upon joining the Waffen-SS on November 1, 1943, Defendant became a member of the SS Death's Head Guard Battalion (SS-Totenkopf-Wachbataillon), also known as the SS Death's Head Battalion (SS-Totenkopf-Sturmbann), at the Sachsenhausen Concentration Camp (also known as "Oranienburg Concentration Camp") near Berlin, Germany, where he served as an armed guard of prisoners until June 5, 1944.

6. The SS Death's Head Battalions guarded the Nazi concentration camps, including Sachsenhausen Concentration Camp. While guarding concentration camps, members of the SS Death's Head Battalions, including Defendant, assisted the Nazi government of Germany in

persecuting civil populations. This persecution included, but was not necessarily limited to, forcible confinement, subjection to slave labor, deprivation of adequate food, shelter, and medical care, physical and emotional abuse, torture, and killing.

7. At Sachsenhausen Concentration Camp, Defendant's duties as an armed guard included guarding the perimeter of the camps, guarding labor details outside the camps, and escorting prisoners to and from work sites. Armed SS Death's Head Battalion guards were stationed in guard towers and as .sentries around the perimeter of the camp.and had orders to shoot to kill any prisoner attempting to escape. All guard companies were trained in and responsible for these duties.

8. People confined at Sachsenhausen were imprisoned and murdered because of their religion, national origin, race, or political opinion. Sachsenhausen prisoners included persons of various European national groups, religious denominations, and political opinions, including Jews, Roma and Sinti (commonly referred to as Gypsies), and political prisoners.

9. On June 5, 1944, Defendant was ordered transferred to the Death's Head Battalion at Plaszow Concentration Camp in German-occupied Cracow, Poland.

10. At some point after his transfer from Sachsenhausen, Defendant was assigned as an SS Death's Head Battalion guard to the Jewish ghetto in the town of Theresienstadt, also known as Terezin, in what was then

Czechoslovakia. Defendant guarded the perimeter of the camp while-armed with a trained guard dog.

11. The ghetto at Theresienstadt was established by the Nazis as an internment camp for Jews, political prisoners, and others. Persons were imprisoned at Theresienstadt because of their religion, national origin, race, or political opinion. Many prisoners died in the camp as a result of disease and starvation. The Theresienstadt ghetto also served as a collection center for deportations to concentration camps, including the extermination facilities at Auschwitz and Treblinka.

12. Defendant served as an SS Death's Head Battalion guard at Theresienstadt until May 8, 1945, when he was captured and became a prisoner of war of the Soviet Army.

13. On February 23, 1950, Defendant filed an Application for Immigrant Visa and Alien Registration with the U.S. Consulate in Stuttgart, Germany, in order to obtain an immigrant visa to the United States. Defendant's application lists his places of residence from 1942-1945 as "German and Rumanian Army." Defendant did not reveal his service in the Waffen-SS or his residence at the Sachsenhausen Concentration Camp (or any other concentration camp), his service at Theresienstadt, or that he was held as a prisoner of war. Defendant orally swore to the truth of the information on his visa application.

14. Based upon Defendant's concealments and misrepresentations to United States authorities as described above, on February 23, 1950, Defendant was issued an

immigrant visa pursuant to the Displaced Persons Act of 1948 (DPA), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, and the Immigration Act of 1924, Pub. L. No. 60-139, ch. 190, 43 Stat. 153. Defendant entered the United States at the Port of New York on March 22, 1950.

15. On or about April 25, 1955, Defendant filed with the United States Immigration and Naturalization Service (INS) an Application to File Petition for Naturalization and Statement of Facts for Preparation of Petition, which together constituted INS Form N-400.

16. On September 9, 1955, the United States District Court for the Eastern District of Missouri granted Defendant's Petition for Naturalization and issued to him Certificate. of Naturalization No. 7554690.

17. There exists good cause for the institution of proceedings against Defendant to revoke and set asid. e the order admitting him to naturalization and to cancel his Certificate of Naturalization, pursuant to section 340(a) of the Inunigration and Nationality Act, as amended, 8 U.S.C. § 1451(a), on the grounds that Defendant unlawfully entered the United States and, accordingly, illegally procured his naturalized citizenship. Specifically, good cause exists to believe that during World War II Defendant was a member of, or participated in, a movement hostile to the United States; willfully misrepresented material facts for the purpose of gaining admission into the United States; and advocated or acquiesced in activities contrary to civilization and human decency.

DECLARATION IN LIEU OF JURAT
(28 U.S.C. § 1746)

I declare under penalty of perjury that the foregoing is true and correct.

/s/_____
Charles L. Gittens
Deputy Director
Office of Special Investigations United States Department of Justice Criminal Division
1001 G Street, N.W.
Suite 1000
Washington, D.C. 20530

Executed on: January 19, 1999

APPENDIX F

CERTIFICATE OF NATURALIZATION OF MICHAEL NEGELE

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UNITED STATES DEPARTMENT OF JUSTICE

DUPLICATE
TO BE FORWARDED TO
IMMIGRATION AND NATURALIZATION SERVICE

No. 7554690

Petition No. 44942

Personal description of holder as of date of naturalization: Date of birth May 5, 1920 sex male complexion medium color of eyes gray color of hair brown height 5 feet 10 inches; weight 155 pounds; visible distinctive marks none
Marital status married former nationality Stateless(Roumania)
I certify that the description above given is true, and that the photograph affixed hereto is a likeness of me.

Right Index

/s/ Michael Nogale.
(Complete and true signature of holder)

Michael Nogale

Seal

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MISSOURI } ss:

Be it known, that at a term of the District Court of The United States, Eastern District of Missouri held pursuant to law at St. Louis, Missouri on September 9, 1955 the Court having found that Michael Nogale then residing at 9100 Meadowbrook, Overland, Missouri intends to reside permanently in the United States (when so required by the Naturalization laws of the United States), had in all other respects complied with the applicable provisions of such naturalization laws, and was entitled to be admitted to citizenship, thereupon ordered that such person be and he was admitted as a citizen of the United States of America.

In testimony whereof the seal of the court is hereunto affixed this 9th day of September in the year of our Lord nineteen hundred and fifty-five and of our Independence the one hundred and eightieth

/s/ Arthur P. McGowan
Clerk of the U. S. District Court.

By _____ Deputy Clerk.

It is a violation of the U. S. Code (as amended) to copy, print, photograph, or otherwise illegally use this certificate.

DEPARTMENT OF JUSTICE

BEST AVAILABLE COPY

APPENDIX G

DEPARTMENT OF STATE INSTRUCTION

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(underlining on document was not made by counsel)

DEPARTMENT OF STATE INSTRUCTION

CONFIDENTIAL
(Security Classification)

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FOR DC USE ONLY

IS-1253

NO.: CA-4674, March 2, 1954

SUBJECT: Interpretation of Sections 212(a)(27), (28), and (29) of the Immigration and Nationality Act as they relate to aliens who were members of, or affiliated with, Nazi, Fascist, al Falangist Parties, their branches, subsidiaries, sections, affiliates, subdivisions, or their allied organizations in the United States or elsewhere outside Germany, Italy or Spain (22 CFR 42.42(j)).

TO: All American Diplomatic and Consular Posts, and the District Administrators of the Trust Territory of the Pacific Islands, the Naval Administrator of the Saipan District, the Governor of American Samoa, and the Executive Secretary of the Canal Zone.

As it appears that certain visa-issuing offices are giving different interpretations in applying the criteria set forth in the Department's circular telegram of December 29, 1952, 5:04 p.m., and the Department's circular airgram of February 19, 1953, 11:45 a.m., and in view of the time which has elapsed since the issuance of these instructions, it has been deemed advisable to review the entire subject matter with a view to cancelling the above-mentioned instructions and issuing new instructions in their stead. Accordingly, the Department's circular telegram of December 29, 1952, 5:04 p.m., and the Department's circular airgram of February 19, 1953, 11:45 a.m., are hereby cancelled, and the following criteria is to be observed:

(1) In instruction of November 20, 1952, the Commissioner of Immigration and Naturalization advised the District Directors of that Service to the effect that evidence has not been adduced establishing that the Fascist Party of Italy, the Nazi Party of Germany, the Falangist Party of Spain, their branches, subsidiaries, sections, affiliates, or subdivisions, or their allied organizations in the United States or elsewhere outside Italy, Germany or Spain advocated the establishment in the United States of totalitarianism or of a totalitarian dictatorship as contemplated in Sections 101(a)(27) and 212(a)(28)(C) of the Immigration and Nationality Act. Mere former or present voluntary membership in any of those organizations is not, therefore, an adequate basis for refusing a visa.

(2) An alien concerning whom there is evidence to support a conclusion that he personally advocates or advocates the establishment of totalitarianism or of a totalitarian dictatorship in the United States, regardless of whether he was or was not a member of

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one of

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APPROVED BY: E. S. Haney
CLEARANCES: SCA, L/EUR

one of the Parties or organizations above-mentioned, is ineligible to receive a visa and excludable from admission into the United States under the provisions of Section 212(a)(28)(D) of the Immigration and Nationality Act.

(3) An alien who is or was notoriously and ardently active in furthering the principles and purposes of the Nazi, Fascist, or Falangist Parties to the extent that his entry into the United States at this time would "be prejudicial to the public interest or endanger the welfare, safety or security of the United States" within the meaning of Section 212(a)(27) of the Act would be ineligible to receive a visa and excludable from admission into the United States.

In applying Section 212(a)(27) of the Act no hard or fast rule may be laid down as applicable in all cases. Such cases must be considered upon the facts and circumstances of the individual case and the exercise of sound discretion by the consular officer is indispensable to their resolution. In illustration of the general criteria to be applied in such cases the following example is given. The alien was a high-ranking member of the Nazi Party, having joined the Party early after its having been organized. He was also a member of other branches, subsidiaries, sections, affiliates or subdivisions of the Party, including the Schutzstaffeln (SS), which he joined early after its organization. He remained in all of these organizations throughout the entire period of their existence. There is no evidence that the alien ever personally advocated the establishment of totalitarianism or of a totalitarian dictatorship in the United States so as to bring his case under category (2) above set out. There is no evidence that the alien was properly charged or tried as a war criminal or that he advocated or acquiesced in activities or conduct contrary to civilization and human decency so as to bring his case within the provisions of 22 CFR 42.42(j)(2). He was, however, a member of an organization or organizations which perpetrated atrocities, but there is no evidence that he personally participated therein. Unless, in such case, the consular officer has reason to believe that the alien's entry into the United States would be prejudicial to the public interest of this country or endanger its welfare by reason of his presence here creating a disturbance among the general population of the United States, as distinguished from a group or segment thereof, through protests, riots, or adverse publicity of such nature that the effective enforcement of the security provisions of the Immigration laws of the United States might seriously be questioned, it does not appear that a visa would properly be refusable under the provisions of Section 212(a)(27) of the Act.

(4) Although mere membership in the Nazi, Fascist and Falangist Parties, their branches, subsidiaries, sections, affiliates, or subdivisions, or their allied

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(Security Classification)

allied organizations in the United States or elsewhere outside of Italy, Germany or Spain does not constitute an adequate basis for the refusal of a visa (category (1) above), it is recognized that certain of these organizations engaged in more despicable activities than others and membership therein, might be indicative of the character of the individual from a security point of view. Accordingly, and in the interest of uniformity of interpretation, cases involving membership in the German-American Bund, the Association of German Nationals (Reichsdeutsche Vereinigung), the Friends of the New Germany (Freunde des Neuen Deutschlands), the Kyffhaeuser League (Kyffhaeuser Bund) while residents of the United States, and the cases of aliens who were members of the Overseas Branch of the Nazi Party (Ausland Organisation der NSDAP) if such aliens were interned in the United States, should be referred to the Department for an advisory opinion in conformity with Visa Circular No. 382 of April 1, 1952. Further, all cases involving membership in the Leadership Corps of the Nazi Party, the Schutzstaffeln (SS), and the Gestapo that cannot be resolved by the consular officer in the light of the foregoing criteria should be referred to the Department for an advisory opinion, with a full development of the facts of the case, including dates of joining, activity in, and date of termination of membership, together with the responsible officer's recommendation.

It is recognized that the criteria hereinabove set forth may be found to be at variance with that observed at some offices or with some advisory opinions previously furnished by the Department. It is not considered necessary, however, to reconsider each such case for this reason. However, if applications for visas in such cases should be renewed, or in the case or cases where the consular officer is of the opinion, upon the basis of the facts of the case, that a reconsideration, in the light of the criteria set forth above, should be applied to prevent an injustice, consideration upon the basis of this criteria should be given.

SIEF (NOTED)

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(Security Classification)

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